

12/5/25

No.

25-671

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**In the Supreme Court of the United States**

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IN RE

MARK CHRISTOPHER TRACY

*Petitioner,*

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*ON PETITION FOR A WRIT OF MANDAMUS TO THE  
CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF  
SANTA CLARA*

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**PETITION FOR A WRIT OF MANDAMUS**

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SUPREME COURT, U.S.**

### **QUESTION PRESENTED**

Whether the California state court violated the Due Process Clause of the Fourteenth Amendment by failing to issue a writ of execution following entry of judgement where no stay or supersedeas had been granted and the court has a clear and undisputable ministerial duty to act under state law.

## **PARTIES TO THE PROCEEDINGS**

Petitioner Mark Christopher Tracy is judgment creditor. Respondent is the Superior Court of California, County of Santa Clara, including its presiding judge or clerk responsible for issuing writs of execution. R. Steve Creamer (deceased) is the judgment debtor and real party in interest.

Although a motion to substitute parties was neither submitted nor granted after Creamer's death during proceedings, the respondent court permitted both appearance and filings by nonparties Ryan and Tyson Creamer as the "personal representatives of the estate of Defendant R. Steve Creamer."

In separate but related False Claims Act proceedings before this Court, Tracy was the US ex rel. plaintiff-petitioner and Creamer (et al.) was defendant-respondent.

## RELATED PROCEEDINGS

Superior Court of California, County of Santa Clara  
(Super. Ct. Santa Clara Cnty.):

*Tracy v. Cohen Kinghorn P.C.* et al.  
No.: 23CV423435 (October 9, 2025)

California Supreme Court (Cal.):

*Tracy v. Court of Appeal 6th Appellate District*  
et al. (*Creamer*)  
No.: S291330 (July 14, 2025)

Court of Appeal for the Sixth Appellate District  
(Cal. App. 6th):

*Tracy v. Ryan Creamer* et al.  
No.: H053022 (April 21, 2025)

United States Supreme Court (US):

*US ex rel. Tracy v. Emigration Improvement*  
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No.: 22A636 (March 31, 2023)

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## PETITION FOR A WRIT OF MANDAMUS

Mark Christopher Tracy respectfully petitions for a writ of mandamus to the California Superior Court for the County of Santa Clara directing issuance of a writ of execution consistent with the judgment entered by the court against R. Steve Creamer.

## OPINIONS BELOW

Following default and upon Tracy's written application, the respondent court entered judgment against Creamer. App. 1a–2a and 3a–4a. There is no formal opinion or order denying the issuance of the writ of execution—the refusal is an administrative denial. App. 3a–4a and 8a–9a. In the same underlying action, the respondent court granted a motion to vacate default but rejected a proposed declaration nullifying the judgement submitted by nonparties Ryan and Tyson Creamer as the “personal representatives of the estate of Defendant R. Steve Creamer.” App. 5a–7a and 22a–24a. The respondent court then granted a motion filed on behalf of the deceased to quash service of the complaint and summons for lack of personal jurisdiction. App. 10a–21a. The Court of Appeal for the Sixth Appellate District dismissed the appeal without opinion. App. 25a. The California Supreme Court denied the petition for writ of mandate and subsequent request for rehearing without opinion. App. 26a and 27a–28a.

## JURISDICTION

The jurisdiction of this Court is invoked under Article III, § 2 of the United States Constitution and 28 U.S.C. 1651 (All Writs Act), authorizing the

issuance of writs of mandamus in aid of this Court's appellate jurisdiction as the petition involves a federal question arising from state court proceedings (violation of U.S. Const. amend. XIV, § 1).

The respondent court's failure to issue a writ of execution occurred on March 21 and November 14, 2024. App. 4a and 9a. State remedies were exhausted with the denial of the request for rehearing of a Petition for Writ of Mandate by the California Supreme Court on July 14, and order of dismissal by the respondent court on October 9, 2025. App. 27a–28a and 29a.

This petition is timely as there is no specific deadline for extraordinary writs, and petitioner has acted diligently.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const., amend. XIV, § 1:

No state shall [...] deprive any person of life, liberty, or property, without due process of law [...]

California Code of Civil Procedure § 387(a):

A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.

California Code of Civil Procedure § 473(b):

The court may, upon any terms as may be just, relieve a party [...] from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment [...] was taken.

California Code of Civil Procedure § 585:

Judgment may be had, if the defendant fails to answer the complaint, as follows:

- (a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has [...] been served, other than by publication, and no answer [or] [...] notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, [...] within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint, [or] in the statement required by Section 425.11 [*i.e. statement of damages*][....]

(Full text and all pertinent constitutional and statutory provisions are reprinted at App. 30a–33a.)

## STATEMENT

### A. Court Judgment Against Creamer

This petition arises from the failure of the respondent court to issue a writ of execution following entry of judgment against Creamer. The salient facts are as follows:

1. As a politically influential land developer,<sup>1</sup> and former engineer at the Utah Division of Drinking Water entrusted with distribution of federal funds to “economically disadvantaged communities” per 42 U.S.C. 300f et seq. (Safe Drinking Water Act of 1974), Creamer is alleged to be the primary initiator, and economic benefactor in allegedly the longest and most lucrative water grabs in the history of Utah.<sup>2</sup>

2. To prevent this Court’s reconciliation of a two-way circuit spit regarding the statute of repose under the False Claims Act,<sup>3</sup> Creamer is alleged to have

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<sup>1</sup> See e.g. Lee Davidson, *Utah’s Biggest Individual Political Donor [...]*, Salt Lake Tribune, August 13, 2018, at <https://www.sltrib.com/news/politics/2018/08/13/utahs-biggest-individual>.

<sup>2</sup> Brian Maffly, *‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out In Court*, Salt Lake Tribune, June 18, 2015, A1, at <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>; Emma Penrod, *Paranoia and a ‘Preposterously’ Oversized Water Tank*, High County News, June 28, 2019, at <https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah>;

<sup>3</sup> *US ex rel. Tracy v. Emigration Improvement District et al.*, No. 22A636 (S.Ct., cert. pet. extension application approved on January 13, 2023); see also Scott K. Zesch, *When Does Statute of Limitations Begin to Run in Action under False Claims Act* (31 U.S.C.A. §§ 3729-3733), 139 A.L.R. 645 § 4 (1997).

commenced and coordinated a concerted public smear campaign against Tracy as a citizen and resident of California via an internet server located in San José.<sup>4</sup>

3. On September 21, 2023, Tracy filed legal action against Creamer (et al.) in California state court for defamation, false light and intentional infliction of emotional distress.<sup>5</sup>

4. On November 28, 2023, Creamer acknowledged receipt of the verified Complaint and Summons.

5. Creamer failed to comply with the summons and thus waived objection to the California court's exercise of personal jurisdiction per Cal. Code Civ. P. § 418.10(a)(1); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 705

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<sup>4</sup> See e.g., supra note 1.

<sup>5</sup> The undisputed Complaint alleges that Creamer—with the active assistance of renowned Salt Lake City law firm Cohne Kinghorn P.C.—in concert with land developers Kem C. Gardner and Walter J. Plumb III, perpetuated a fraudulent scheme to retire senior perfected water rights vis-a-vis duplicitous water claims stripped from the only active federal military cemetery created by an Act of Congress, signed into law by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever used for the burial of the dead,” but however misappropriated for the construction and massive expansion of a luxurious private urban development, marketed and sold as the “Bel Air of Salt Lake City” to unsuspecting California citizens and residents immediately following the 2002 Winter Olympics. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773–74 (1984)(circulating print media for sale establishes sufficient contact with the forum state to exercise personal jurisdiction of a libel claim against an out-of-state defendant); *Calder v. Jones*, 465 U.S. 783, 789–90 (1984)(intentional, and allegedly tortious, actions expressly aimed at a California citizen and resident are sufficient to establish personal jurisdiction of an out-of-state defendant).

(1982)(“expression of legal rights is often subject to certain procedural rules [...] the failure to enter a timely objection to personal jurisdiction constitutes [...] a waiver of the objection”).

6. On January 5, 2024, Tracy served Creamer the “Request for Entry of Default” and “Statement of Damages” pursuant to Cal. Code of Civ. P. § 585(a) in conjunction with § 425.11.

7. Thirteen days later, unbeknownst to Tracy, Creamer died.

8. The respondent court entered Creamer’s default on March 6, 2024. App. 1a–2a.

9. Although a state court appointed Ryan and Tyson Creamer as representatives of Defendant Creamer’s probate estate four days after entry of default, no action was taken by the same following service of the “Notice of Court Order” on March 8, 2024.

10. On March 21, 2024, the trial court entered judgment against Creamer (effective date 03/19/2024) in the amount of \$154,350,530.00 with the cursory notation “NO PROPOSED JUDGEMENT FORM PROVIDED” thereby rendering the instrument unsuitable as a writ of execution per 28 U.S.C. 1738 *et seq.* (Full Faith and Credit Act). App. 3a–4a.

11. That same day, Tracy filed California Judicial Council form JUD-100. App. 8a–9a.

12. To date, no order vacating the judgement against Creamer has been entered by any state or federal court.



**B. Judicial Acts and Omissions in Violation of Petitioner's Federal Constitutional Rights**

1. More than six months after entry of judgement, Ryan and Tyson Creamer filed a motion as the "personal representatives of the estate of Defendant R. Steve Creamer" to vacate default (not judgement) but failed to substitute parties, cited no reason for "mistake, inadvertence, surprise, or excusable neglect" other than the "unexpected" death of Creamer, falsified the proof of service under penalty of perjury, and failed to include an answer or proposed motion as required under Cal. Code of Civ. P. § 473(b).

2. Although nonparties to the proceedings, the respondent court granted Ryan and Tyson Creamer's motion to vacate default but entered no order regarding the judgment entered against Creamer more than six months prior thereto. App. 6a–7a.

3. Tracy filed timely notice of appeal.

4. Contrary to the mandate of Code of Civ. P. § 585(a) in conjunction with § 425.11 requiring "immediate" issuance of a writ following default, on November 14, 2024 (i.e. 238 days after submittal) the respondent court returned the proposed Judicial Council form JUD-100 with the notation "the form is not filled out" although damages were recorded both in the default judgment and Statement of Damages filed with the respondent court and served on Creamer prior to his death. App. 8a–9a.

5. During appellate review, Ryan and Tyson Creamer filed a motion now in the name of the deceased defendant to quash service of the complaint and summons for lack of personal jurisdiction

although Creamer had waived objection to the same during his lifetime. Cal. Code Civ. P. § 418.10(a)(1).<sup>6</sup>

6. Ryan and Tyson Creamer submitted sworn affidavits that the deceased defendant did not conduct business “on behalf of himself” in the forum state but recorded no basis for their “personal knowledge” of deceased defendant’s activities and contrary to Creamer’s own obituary evidencing extensive and continuing business in California over three decades and the undisputed allegations of the verified Complaint.

7. Although the order vacating Creamer’s default was under appellate review, despite having filed no motion to substitute parties, the respondent court granted the motion to quash service of the summons for lack of personal jurisdiction filed by nonparties on behalf of the deceased defendant and ruled that jurisdictional discovery would be “futile” contrary to the affidavits before the court. App. 10a–21a.

8. Tracy filed timely notice of appeal.

9. The California Court of Appeal for the Sixth Appellate District dismissed appeal without opinion. App. 25a.

10. Tracy timely filed petition for writ of mandate with the California Supreme Court requesting an order for the issuance of a writ of execution per Cal. Code Civ. P. § 1085(a) in conjunction with § 1086.

11. The California Supreme Court denied the petition without opinion. App. 26a.

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<sup>6</sup> *Ins. Corp. of Ir.*, 456 U.S. at 705, *supra*.

12. Tracy timely filed request for rehearing.

13. The clerk of the California Supreme Court rejected the request via correspondence dated July 14, 2025. App. 27a–28a.

14. Despite having entered no order vacating the judgment against Creamer,<sup>7</sup> the respondent court dismissed the action on October 9, 2025. App. 29a.

### REASONS FOR GRANTING THE WRIT

A court may issue a writ of mandamus when (1) the petitioner’s “right to issuance of the writ is ‘clear and indisputable’”; (2) “no other adequate means [exist] to attain the relief he desires”; and (3) “the writ is appropriate under the circumstances.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (quoting *Cheney v. United States Dist. Court*, 542 U.S. 367, 380–81 (2004)) (brackets in original).

Each of those prerequisites for mandamus relief is met here—the court record documents a violation of a federal constitutional right to property, a clear and indisputable duty to act by a judicial officer of a state court, and no adequate alternative relief available.

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<sup>7</sup> Having filed a defective, unsuitable motion on behalf of a deceased party, in a blatant attempt to nullify the judgment entered against Creamer, Ryan and Tyson Creamer submitted a proposed order for the respondent court to declare “**IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiff MARK CHRISTOPHER TRACY, shall take nothing by his Complaint from Defendant R STEVE CREAMER” (emphasis in original). The filing was however aptly rejected by the respondent court clerk as inconsistent with the court record. App. 22a–24a.

### **A. Violation of Property Rights**

A claim for monetary damages reduced to judgment vests petitioner with a constitutionally protected property interest in the debt. *See e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982)(a cause of action is a species of property); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (property rights include “expectations of entitlement” created under state law); *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 352 (1909)(courts may render judgment by default under the circumstances provided for in the statute). *Morris v. Jones*, 329 U.S. 545, 551 (1947)(default judgment is entitled to full faith and credit in another State regardless if the underlying claim would not be enforced in the forum state).

The respondent court’s refusal to issue a suitable writ of execution deprives petitioner of this right to property without due process, rendering the judgment unenforceable and void in effect. U.S. Const. Amend. XIV, § 1; *see e.g., Tyler v. Hennepin County*, 598 U.S. 631, 632 (2023) (state actions affecting property must comply with constitutional rights).

This violation implicates a federal question reviewable by this Court. 28 U.S.C. 1651.

### **B. The Respondent Court Has a Clear and Indisputable Ministerial Duty**

Under California state law, the issuance of judgment and a writ of execution are not discretionary but ministerial once default exists and a proper application is filed. Cal. Code Civ. P. § 585(a) in conjunction with § 425.11. The respondent’s refusal to issue an instrument suitable for the seizure of

property under the Full Faith and Credit Act constitutes a clear and indisputable violation of an administrative duty and thus an omission in excess of its jurisdiction. *Will v. United States*, 389 U.S. 90, 95 (1967); *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976) (mandamus for clear abuse or usurpation of authority); *Virginia v. Rives*, 100 U.S. 313, 323 (1880) (“[mandamus to a state court] is an established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do.”)

Likewise, even if the judgment were disturbed by motions attacking the preceding default and/or service of process, under binding state law, the respondent court lacked jurisdiction vacate judgement after six months,<sup>8</sup> to grant a motion during appellate proceedings,<sup>9</sup> to grant a motion filed by nonparties to the proceedings,<sup>10</sup> to ignore defendant’s waiver of objection to the court’s exercise of personal jurisdiction,<sup>11</sup> to consider a motion submitted with a falsified proof of service,<sup>12</sup> or enter an order for a

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<sup>8</sup> Cal. Code of Civ. P. § 473(b); *Rappleyea v. Campbell*, 8 Cal.4th 975, 980 (1994)(citing *Aldrich v. San Fernando Valley Lumber Co.*, 170 Cal.App.3d 725, 735, fn. 3. (1985) (“the six-month time limit for granting relief under section 473 is jurisdictional and relief cannot be granted if the application for such relief is instituted more than six months after the entry of the judgment, order or proceeding from which relief is sought.”))

<sup>9</sup> *Gold v. Superior Court*, 3 Cal.3d 275, 280 (1970); *Chamberlin v. Dale's R.V. Rentals, Inc.*, 188 Cal.App.3d 356, 359 (1986).

<sup>10</sup> Cal. Code of Civ. P. § 387(a).

<sup>11</sup> *Ins. Corp. of Ir.*, 456 U.S. at 705, *supra*.

<sup>12</sup> *Lee v. Placer Title Co.*, 28 Cal.App.4th 503, 511 (1994) (defective service will be given no effect).

known deceased party to the proceedings.<sup>13</sup> *Pennoyer v. Neff*, 95 U.S. 714 (1877) (court orders lacking jurisdiction are null and void).

**C. No Adequate Alternative Remedy Exists**

All state remedies have been exhausted, and further delay would cause irreparable harm should estate assets be unlawfully distributed prior to satisfaction of the monetary claims reduced to judgement. App. 3a–4a.

Following Creamer’s waiver of objection to the exercise of personal jurisdiction and upon expiration of the six-month period, no court can vacate the binding judgment entered against Creamer, and only this Court may order issuance of a suitable writ for the seizure of properties under the Full Faith and Credit Act. *Cheney*, 542 U.S. at 380, *supra* (mandamus requires no adequate alternative);

**D. Exceptional Circumstances Warrant This Court’s Discretionary Action**

The respondent court’s willful noncompliance with clear and indisputable statutory duties undermines the finality of judgments and fundamental federal due process protections established by this Court. Without mandamus, petitioner faces a grave miscarriage of justice of having to relitigate claims already reduced to judgement. *Ex parte Peru*, 318 U.S. 578, 583 (1943) (mandamus appropriate as an expeditious and

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<sup>13</sup> *Grappo v. McMills*, 11 Cal.App.5th 996, 1008 (2017)(citing *Herring v. Peterson*, 116 Cal.App.3d 608, 612 (1981); and 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 317, p. 929).

effective means of compelling an inferior court to exercise its authority when it is its duty to do so).

Relief is not available elsewhere, as lower federal courts lack jurisdiction to issue mandamus to state courts in this context. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

### CONCLUSION

For the foregoing reasons, the petition for a writ of mandamus should be granted.

### PRAYER FOR RELIEF

Petitioner respectfully prays that this Court:

1. Direct the Superior Court of California, County of Santa Clara to issue a writ of execution consistent with the judgment entered by the respondent court against Creamer.
2. Grant further relief as the Court deems just and proper.

Respectfully Submitted.

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