26-5026
No. ______

ORIGINAL

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

SERGEY DONSKOY,
PETITIONER,
V.
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

Petitioner
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June 16, 2026

QUESTIONS PRESENTED

In the beginning of 2025, Petitioner filed a complaint seeking a district court mandate compelling the Respondent's duty to adjudicate the Petitioner's I-140 petition for alien worker filed with USCIS in 2020 in the field it actually sought and without discriminating against Petitioner on the individual basis within the class of award recipients, and also taking into account other claims, previously not brought for court review or not actually litigated. The district court dismissed the complaint, applying the law of "claim preclusion", referencing to the Petitioner's complaint which in 2021 sought, on different claims, a court declaration that Petitioner was entitled to the "extraordinarily ability" visa (E11 immigrant status).

On appeal, the court of appeals afforded a prolonged extension of time to Respondent for filing its answering brief, but later, on the Respondent's motion for summary affirmance, affirmed the district court decision, based on "insubstantial appeal" standard.

Petitioner hereby presents the following questions for the Court's consideration:

1. Whether the legal test examining the transactional nucleus of facts shared between causes of action, which evolved as common law of "res judicata doctrine" for the purpose of estoppel, is unconstitutional.
2. Whether the court of appeals may not take for review on the merits and grant a motion for summary disposition at "any time" during prolonged extension of time given for filing the answering brief.
3. Whether the court of appeals erred in affirming, based on "insubstantial appeal" standard, the district court dismissal of the Petitioner's complaint.

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PARTIES TO THE PROCEEDING

Petitioner in this Court (Appellant in the Court of Appeals, Plaintiff in the District Court) is Sergey Donskoy, an individual pro se petitioner residing in the State of California.

Respondent in this Court (Appellee in the Court of Appeals, Defendant in the District Court) is the United States Citizenship and Immigration Services (USCIS), a U.S. agency, under 6 USC § 271 and within the meaning of the Administrative Procedure Act, 5 USC § 551(1), responsible for adjudicating immigration benefits, including immigrant petitions for alien worker.

CORPORATE DISCLOSURE STATEMENT

Petitioner Sergey Donskoy represents himself as a natural person and not a corporation.

STATEMENT OF RELATED PROCEEDINGS

There are no directly related proceedings in this or any other court within the meaning of Rule 14.1(b)(iii).

TABLE OF AUTHORITIES

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sergey Donskoy respectfully petitions for a writ of certiorari to review the affirmance of the United States Court of Appeals for the Ninth Circuit.

ORDERS AND OPINIONS BELOW

The Ninth Circuit's order granting the Respondent's motion for summary affirmance and affirming the district court judgment (opinion not published) (App. 1a–2a); the District Court's order (with opinion) dismissing the Petitioner's complaint with prejudice (App. 3a–9a); the Ninth Circuit's order granting the fourth extension of time for filing the Respondent's answering brief on appeal (App. 10a–11a).

JURISDICTION

In May 2025, Petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit. On March 23, 2026, the Circuit Clerk filed the order affirming the district court judgment. On April 15, 2026, Petitioner submitted a motion for reconsideration which is pending with the Ninth Circuit and on date of submitting this petition (June 16, 2026) remains undecided. This Court has jurisdiction under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. III § 1 and § 2 ¶ 1, U.S. Const. amend. VII, U.S. Const. amend. XIII § 1, 28 USC § 1651, and 5 USC § 706 are reproduced in the appendix at pages 18a–20a.

STATEMENT OF THE CASE

A. Introduction

In August 2020, Petitioner Sergey Donskoy filed with Respondent USCIS his I-140 petition for alien worker of "extraordinary ability" (E11 immigrant status) in the field of education. Respondent adjudicated the I-140 petition in the field of business and in May 2021 denied to Petitioner E11 status in the field of "Business". Non-issuance of immigrant status to Petitioner precluded him from filing other petitions, including one for the "Employment Authorization Document" (EAD). (The EAD is basically an electronic record in the DHS computer database, bearing legal effect, by whose means the agency permits U.S. enterprises to compensate the people's labor discharged for the livelihood.) That preclusion constrained American employers' right to work (the real right to collective specialization[1]) and infringed the Petitioner's substantive freedom of human will,[2] imposing on him harming involuntary servitude, forbidden in the United States by the Amendment XIII to the U.S. Constitution.

In June 2021, Petitioner filed a civil complaint, asking that the district court remand, pursuant to All Writs Act, for a declaration that Petitioner is qualified for "extraordinary ability" visa. The district judge determined that USCIS has not violated the APA in denying to Petitioner the "extraordinary ability" visa in the field of business. The district court did not proceed to trial on the claims not included in the Petitioner's motion for partial summary judgment and did not issue the declaration sought by Petitioner.

In January 2025, Petitioner filed a complaint based on a different transactional nucleus of facts and requested a different remedy. He claimed agency declination to adjudicate the I-140

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1 See Donskoy, S.A. Real Human Rights, 3 *Sovremennoe Pravo* (2026) 110, at 125. App. 27a.
2 *Id.*, at 127. App. 29a.

petition (a) in the field of education, (b) under a federal regulation and (c) under a statutory criterion (8 USC 1153(b)(1)(A)(iii)); and a fact of discrimination against the Fulbrighter, all different from those claimed and actually "litigated" by means of partial summary judgment in 2021. Petitioner sought a relief of another remedy (remand to perform a duty rather than to issue a declaration). The district court dismissed the complaint with prejudice, applying the claim-preclusive test developed within common law. App. 3a–9a.

In May 2025, Petitioner appealed to the Ninth Circuit Court, seeking de novo review. Respondent never answered to the Petitioner's opening brief, delaying court proceeding by numerous requests seeking streamlined and discretionary extensions of time for filing its answering brief. In January 2026, Respondent filed the fourth request which has been granted. App. 10a–11a. See also docket entries reflecting all those extensions granted. App. 12a–17a, dkt. 7, 14, 19, 27. Eventually, the answering brief was not submitted. Instead, in February 2026, Respondent filed the Motion for Summary Affirmance (MSA). App. 16a, dkt. 28. Petitioner opposed the MSA. App. 17a, dkt. 31.

On March 23, 2026, the Clerk filed the court of appeals decision granting the MSA and affirming the district court judgment. App. 1a–2a. On April 15, 2026, Petitioner submitted his motion for reconsideration. App. 17a, dkt. 34. The motion argued that the panel erred because misunderstood res judicata doctrine and misapplied "res judicata" test of outdated common law; that the untimely MSA could not be taken for review on the merits and should have been dismissed; that the Respondent's question at issue for summary affirmance was properness of the applied claim preclusion; that the Respondent's counsel brought multiple legal standards but not argued under them, and has not sustained its burden of proof for summary affirmance; that the claims on appeal are not unsubstantial, both factually and legally; that Petitioner has drawn multiple inferences, showing that the district court dismissal was erroneous and, in terms of its preclusive effect, substantially harmed Petitioner's interests; and that in the 2025 complaint he claimed the facts and argued the issues, violations of rights, and sought a remedy different from those in the 2021 complaint.

Because of substantial question of fundamental invalidity and unconstitutionality of the current law of res judicata doctrine, because the Ninth Circuit promulgated a circuit rule inconsistent with the principles of the Federal Rules of Appellate Procedure and other Circuits' views on timeliness of summary disposition, because of equivocality of *Hooton* (insubstantial appeal or insubstantial preclusive effect), because the district court dismissed the Petitioner's complaint applying the unconstitutional law of preclusion, all this warrants to request a writ of certiorari, seeking review of the lower courts' decisions in the Supreme Court.

B. On Res Judicata Doctrine

In January 2025, Petitioner filed a complaint claiming a different transaction – adjudication of immigrant petition in the field sought by petitioner and beneficiary. Respondent's avoidance to adjudicate the Petitioner's I-140 petition in the field of education was attested by evidence. Petitioner raised a different issue under a different jural relation—and under a different fundamental legal relation—asking for a compelling relief, under 5 USC § 706(1), rather than asking for a declaration previously sought under All Writs Act. The discrimination against Petitioner and segregation, which can be discerned from the face of the agency decision, was brought in the 2025 complaint as a different issue and further explained as a violation of the U.S. Const. amend. I and U.S. Const. amend. XIII respectively.

C. On Timeliness of Summary Disposition

The court of appeals granted the first extension of time for filing Respondent's answering brief after the briefing session was opened by filing the Petitioner's opening brief. In totality, the court granted to Respondent four extensions. App. 13a–17a, dkt. 7, 14, 19, 27. That gave to Respondent more than half a year to answer on appeal. During the prolonged extension of time for filing the answer on appeal Respondent filed the MSA, fashioning it as an answer arguing properness of the adjudged res judicata bar, under de novo standard of review. App. 16a, dkt. 28.

D. On "Insubstantial Appeal" Standard

The court of appeals granted the MSA under 9th Cir. R. 3-6(a) and *Hooton*, which together refer to "insubstantial appeal" standard. App. 1a–2a. Where the notion of "insubstantial appeal" comes from the face of the appeal, the insubstantiality means factual insufficiency of claims. With that, in *Hooton* the court additionally referenced to a preclusive effect of the inferior court's ruling – whether taking the appeal for review and prospective reversal of the lower court's decision would change the outcome for the criminal appellant in that case. In this regard, the standard of "insubstantial appeal" in *Hooton* equivocally suggests a second standard examining the preclusive effect of the inferior court's decision, not the sufficiency of claims on the face of the appeal.

Regardless of the *Hooton*'s equivocality and despite the fact that Respondent argued in its motion neither an insufficiency of claims on the appeal nor a harmlessness of the preclusive effect of preclusion, Petitioner opposed the MSA, addressing the factual and the legal (in terms of harming preclusive effect) substantiality of the appeal.

REASONS FOR GRANTING THIS PETITION

I. CERTIORARI SHOULD BE GRANTED BECAUSE OF IMPERATIVE PUBLIC IMPORTANCE OF THIS CASE

A. This Case Presents a Question of High Importance About U.S. Courts' Function of Carrying Justice and Establishing a Uniform Law of Res Judicata Doctrine in the Face of Fundamentally Invalid Law Precluding Review of Legal Matters

The ends of justice are not in merely redistributing legal rights, but in redistributing natural human rights[3] and basic goods of a human[4], where such redistribution of human goods is procured by the rule of law under the fundamental legal relations. The fundamental legal relations are attributed to the natural incidents and substantive human freedoms, and ground a set of universal rights ("real rights") based on which a lawmaker's legal intent aiming at regulating the social interactions transcends into a variety of jural relations[5] under which legal rights are established and guaranteed by the law enforcement. App. 21a–30a.

Res judicata stands for protecting defendants from those plaintiffs seeking re-litigation after a remedy mitigating the same grievance and cause of action has already been determined and rendered in a previous final judgment. "*Res judicata*" means [a whole] "matter judged". A legal matter involves a *cause of action* (the claims about transactions in dispute, which should be further proved and recognized as facts, and an issue referencing to those transactions and pointing to a violation of law) and a *relief* sought by the aggrieved party with a purpose to restore the benefits to the extent of peaceful and just level of humanity pacifying the aggrieved party.

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3 *Id.*, at 117–120.

4 See Donskoy, S.A. Inalienable Immaterial Human Goods and Human Freedoms. 12 *Sovremennoe Pravo* (2024) 79. See also the Preamble to the draft Universal Declaration of Inalienable Rights. App. 28a.

5 Hohfeld, W.N. Fundamental Legal Conceptions as Applied in Judicial Reasoning. 23 *Yale Law Journal* (1913) 16; Corbin, A.L. Jural Relations and Their Classification. 30 *Yale Law Journal* (1920) 226, at 229.

Remedy is the "purpose" of a legal matter. *Cromwell v. County of Sac*, 94 U.S. 351 (1876); *Washington, A. & G. Steam Packet Co. v. Sickles*, 65 U.S. 333 (1860). "A party seeking to enforce a claim, legal or equitable [] is not at liberty to [] present only a portion of the grounds upon which *special* relief is sought..." (emphasis added). *Stark v. Starr*, 94 U.S. 477, 485 (1876). The estoppel is applicable to legal matter as a whole, including the remedy demanded.

In the twentieth century, however, the solid estoppel has been split into the two laws of preclusion, known as "issue preclusion" ("collateral estoppel") and "claim preclusion" ("res judicata doctrine"). *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. ___ (2020). Each of these laws omits the test for reliefs identity. With the adoption of the Federal Rules of Civil Procedure and the unified form of action "... an impulse toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and *remedies* is strongly encouraged." (emphasis added). *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966). Despite the integral structure of legal matter, the courts began entertaining estoppel by application of the two independent preclusive tests to the interdependent and inseparable elements of complaint, not paying attention to remedy sought.

In applying the issue-preclusive test, they examined issues identity by analyzing "jural issues" as those arising from a multitude of jural relations, as detected by Hohfeld (1913). Such issues, however, may arise from the same "human goods transactions" within an event occurred between the people (there is nothing else to transmit between the human agencies).[6] Absent joint analysis of those transactions put in issue makes the law of collateral estoppel fundamentally invalid, as it does not compare relevant facts, ignoring the purpose of the legal matter as a whole.

6 See Donskoy, S.A. Real Human Rights. 3 *Sovremennoe Pravo* (2026) 110, at 120-121, in part of the basic goods transactions between the human agencies. App. 22a–23a.

The claim-preclusive test, on its own, also does not analyze the purpose of the action as a whole. It is invalid because a single fact or event can be attributed to a complex of jural relations regulating the different obligations whose miscarriage causes substantially different legal issues. This law lacks a test for issues identity (or for reliefs identity) in regard to a claimed transaction.

A transaction involves a human act ("natural incident") performed over a human good for its immaterial transmission between human persons.[7] In the positivist's view, a transmission of immaterial human goods can be better understood as a legal transaction of "benefits" (including material and non-material benefits) defined in the applicable law.

Based on the fundamental legal relations, all reliefs can be reduced to the four remedy classes including (1) compelling, (2) injunctive, (3) declaratory, and (4) compensatory remedies. A relief under one remedy class mitigates all possible jural issues arising from all related beneficial transactions in dispute (and they can be conveniently litigated based on a single complaint). As such, upon reliefs identity has been found, there is no need to further examine jural or legal issues identity, as legal issues relating to the relief of same remedy class includes all identical jural relations and so all discrete legal rights violated at a time of the event(s) in dispute. The single uniform estoppel, and test for *res judicata* purposes, should therefore examine (a) identity or privity between the parties, (b) common transactional nucleus of facts shared between the legal matters, (c) finality of the judgment on the merits, and (d) identity between the remedies already rendered and instantly sought.

Based on the four "primary remedies" and depending on the complexity of the event in dispute, an aggrieved party may bring up to four distinct complaints each seeking a remedy of one kind. Under the provisions of U.S. Const. art. III and U.S. Const. amend. XIII, safeguarding

7 *Id.*, at. 120.

the permissible constraint put on free will by social contract, a court of justice may not prohibit litigation initiated by each such complaint, or otherwise require plaintiffs to file two or more such complaints at a time, or submit an "all-at-once complaint". The grounds put in the factual basis of each such complaint may depend on the relief which should first be distributed by a prior judgment, and therefore the grounds in an all-at-once complaint may be inconsistent between themselves. This prudence comes from the integral nature of inalienable human right supplemented with the indivisible natural incidents and from the four divisible fundamental legal relations which pertain to the integral inalienable right but are independently controlled by the rule of law.[8] Same intuition can be discerned in *Stark v. Starr*, 94 U.S. 477, 485 (1876).

Over several last decades, claim preclusion of subsequent complaints has become a widely used practice which, however, resulted in unjust denial of litigation, infringing the right to resolve disputes in law of those plaintiffs seeking the ends of justice in a distinct remedy. Barring the plaintiffs' complaints imposes on them, as human persons, involuntary servitude infringing, contrary to U.S. Const. amend. XIII, human will (in part of means of will for communicating dignity)[9] and the real right to social contract adopted (in part of the judicial power) under U.S. Const. art. III §§ 1 and 2. Such preclusion also infringes plaintiffs' right guaranteed by U.S. Const. amend. VII, because a jury trial is never afforded in a civil matter if it was said *res judicata*.

In this case the district court applied the invalid law of "res judicata doctrine", citing *Stewart v. United States Bancorp.*, 297 F.3d 953, 959 (9th Cir. 2002). Res judicata should estop the legal matter as a whole. However, the *Stewart* test includes only "(1) an identity of claims;

8 *Id.*, at. 121.
9 See articles 1, 10, 11 and 20 of the Universal Declaration of Inalienable Rights. App. 25a, 28a, 29a.

(2) a final judgment on the merits; and (3) identity or privity between parties." This test does not refer to a remedy. *Id.* Therefore, the law of *Stewart* is invalid for the reasons explained above. Analogously, there is a plethora of matters which were estopped in the United States courts, under the same invalid law of "res judicata doctrine".

In *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005) estoppel applies if the earlier litigation "... (2) involved the same claim or *cause of action* as the later lawsuit []" (emphasis added). This test extends to a "cause of action". A cause of action, as noted above, includes the factual claims about beneficial transactions *and* a legal issue arising from these transactions. "A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show." *Baltimore Steamship Co. v. Phillips*, 274 U.S. 316 (1927).

The district court order exhibits that the district judge along with the Government does not cognize a difference between "APA claim" and "APA issue". The court misunderstood the law of preclusion which in the reality requires identity of either legal issues or reliefs (or both, in redundancy). In the former case the court erred by not examining the identity of issues between the causes of actions. In the latter case, because of lacking knowledge about fundamental legal relations and ignoring the concept of "primary right", and thus for hermeneutical reasons, the district judge, by precluding the 2025 Petitioner's complaint, carried out epistemic injustice.

The APA, under 5 USC § 706(1), provides for a compelling remedy. Pursuant to 5 USC § 706(2), the APA promises declaratory reliefs: "hold unlawful" and "set aside" relating to the beneficial transactions of the "human convictions", which is a human good, – assumptions which agencies draw in their decisions as findings and conclusions. Respondent never adjudicated the submitted documentation to make findings, conclusions in the field the I-140 petition actually sought. Even if the court may not provide a relief setting aside the agency action as a whole (which may be unnecessary because USCIS "denied" what Petitioner did not request, and so such agency decision is void), a relief to hold unlawful agency findings and conclusions can be provided. As such, none of the claims in the Petitioner's complaint grounding another legal issue and a distinct relief could be precluded. The district court applied the invalid law and erred in dismissing the 2025 complaint. The applied common law developed by the judiciary is inconsistent with U.S. Const. art. III, and its application was orchestrated contrary to U.S. Const. amend. XIII. The court of appeals, consequently, erred in affirming such unlawful decision of the district court. As such, this Court should hold the district court judgment and the court of appeals affirmance unlawful and reverse the affirmance.

"...[F]ederal courts participate in developing 'uniform federal rule[s]' of res judicata, which this Court has ultimate authority to determine and declare. *Taylor v. Sturgell*, 553 U.S. 880 (2008) (quoting *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U. S. 508 (2001)). This Court, therefore, may finally establish a uniform "res judicata" test suggested above. If the suggested estoppel is adopted, the use of "collateral estoppel" may be unnecessary, as in light of identical transactions and identical remedies, the legal issues embodied in the consecutive causes of action will be identical automatically – and thus an analysis of complex, and often complicated, jural relation(s) within the matters would be a redundant task.

B. Granting Certiorari Is Warranted Because Irreparable Harm Is Ongoing

Defendants request to determine plaintiff's complaints *res judicata*, on a daily basis. Such preclusion often comes with prejudice and with a depressing label of futility, meaning that the party will be unable to litigate a different issue arising from the same transactions. For this reason, an immediate review and, importantly, understanding of fundamental deficiency in the current claim-preclusive test can help outstanding litigants obtain a relief, reaching the ends of justice.

As argued above, application of the two distinct preclusive laws focusing on distinct elements of complaint (independently, in disjunction) does not mean that these laws are applied in conjunction as a solid estoppel. The injustice of banning subsequent litigation harms the interests of aggrieved parties because each such party becomes legally disabled in recovery from an infringed substantive freedom. The injustice of claim preclusion can be said of hermeneutical nature. This problem has been persisting at different angles, including incomplete identity (vague meaning) of concepts used in adjudication, such as "cause of action", "issue", "transactional nucleus of facts", "primary right", "remedy", etc.; the conceptual error of disjunctive (independent) application of split estoppel to facts and issue, the interdependent and inseparable elements of legal matter, and disregarding a special characteristic of relief; forgotten conception of the jural relations as used in judicial reasoning;[10] hazy understanding of the "transaction" and unawareness of its elements; lacking knowledge of substantive freedoms and fundamental legal relations grounding those intuitively called "primary rights" (e.g., the primary right of bodily safety in *Baltimore Steamship*) and such but reasonably derived "real rights" (e.g., the real right to health protection (prophylactics)).[11]

Every day U.S. courts preclude legal matters, forgetting about constitutional guarantees, while a relief of compelling, injunctive, declaratory, or compensatory remedy might have been made available to aggrieved parties. This also harms the society, because non-pacified grievances may lead plaintiffs to taking the business of goods restitution into their own hands for

10 Hohfeld, W.N. Fundamental Legal Conceptions as Applied in Judicial Reasoning. 23 *Yale Law Journal* (1913) 16.
11 Donskoy, S.A. Real Human Rights. 3 *Sovremennoe Pravo* (2026) 110, at 123. App. 25a.

performing retaliative transactions, engendering even more legal issues and wrongdoings. The harms from the precluded litigation are multifaceted and spilling over to virtually all U.S. residents relying, in good faith, on the rule of law in seeking protection of their infringed substantive freedoms. All of this happens because of the clearly invalid and unconstitutional common law of claim preclusion.

This Court's immediate intervention will ensure that the persons who suffer because their freedoms have been infringed and not restored do have an opportunity to seek justice. The epistemic injustice pertaining to the application of invalid law of preclusion and the paramount importance in having a valid res judicata test warrant this Court's urgent intervention.

II. CERTIORARI SHOULD BE GRANTED TO CORRECT CONFLICTS BETWEEN THE NINTH CIRCUIT'S RULES, FEDERAL RULES, AND THE MOTION PRACTICE IN SUMMARY DISPOSITIONS OF OTHER CIRCUITS

The majority of Circuits entertain MSA as a speedy instrument in the appellate proceedings, and court authority over MSA originates in Federal Rules of Appellate Procedure (FRAP) Rule 2:

> "On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b)."

Case law accords with this position. "Rule 2 authorizes summary affirmance..." *U.S. v. Monsalve*, 388 F.3d 71, 73 (2nd Cir. 2004). Circuit Rules may not contradict to FRAP. Fed. R. App. P. 2 refers to expediting decisions in regard to procedural actions not directly defined in FRAP – and they include court decisions on MSA. In the D.C. Circuit all dispositive motions must be filed within 45 days of the appeal being docketed. (D.C. Cir. R. 27(f)(1)). The Sixth and the Eighth Circuits do not allow MSA grounded on a lack of merits, unless they are entirely frivolous (6th Cir. R. 27(e); 8th Cir. R. 47A(a)). The Tenth Circuit does not permit filing of motions arguing the absence of a substantial merit, and for other motions to dismiss the Circuit limits filing time to 14–20 days (10th Cir. R. 27.3(A)(3)). In the Third Circuit motions for summary disposition must be filed before appellant's brief is due (3rd Cir. R. 27.4(b)). The Seventh Circuit concluded that MSA should be filed only in emergencies *(United States v. Fortner*, 455 F.3d 752–754 (7th Cir. 2006)). In *Fortner* (just as in this case) the Government filed MSA several days before its brief was due, providing a "self-help extension of time", but *Fortner*'s court dismissed it for timing issue. "Summary disposition is appropriate in an emergency, when time is of the essence…" *Id.* at 753. The court of appeals in this case affirmed.

Despite such well-established practice among Circuits, the Ninth Circuit promulgated 9th Cir. R. 3-6 which permits submission of MSA "at *any* time prior to the completion of briefing in a civil appeal or petition for review" (emphasis added). But because of the expedited nature of MSA set out in FRAP, this "any" clause may not be construed literarily. The briefing session in the Ninth Circuit may be extended unconditionally only by one streamlined request filed before the answering brief is due, granting only 30 additional days. The excepting 9th Cir. R. 26(b), under Fed. R. App. P. 2, does not permit time extensions for MSA.

In light of the summary disposition practice throughout the Circuits, providing for that MSA may be filed beginning from the moment before appellant's brief is due and up to 45 days from the appeal docketing, the maximum possible time for filing MSA in the Ninth Circuit is capped by the deadline once granted on a streamlined request. This amounts to about 90 days, at maximum, beginning from the appeal being docketed. In this case, however, the Respondent's MSA, which was due in July, 2025, was submitted in February 2026, in more than half a year, and the court of appeals has taken it for review on the merits (and even granted), which makes a clear reason to believe that 9th Cir. R. 3-6 is inconsistent with the FRAP principles and with the motion practice adopted by the majority of Circuits for summary dispositions.

Moreover, in this case Respondent filed the MSA, given the extension of time for filing particularly answering brief. The MSA was structured and supplemented with addendum as an answering brief (App. 16a, dkt. 28), while an MSA may not substitute an answer on appeal, including by putting movant's grounds opposing the issue raised on appeal by appellant. The Petitioner's appeal is not unsubstantial and also attests harm. *U.S. v. Alex*, 81-6010; *Page v. USA*, 356 F.2d (9th Cir. 1966). App. 17a, dkt. 31. Hence, the court of appeals unlawfully granted the MSA, referencing to *9th Cir. R. 3-6* and *Hooton*. App. 17a, dkt. 33.

Therefore, 9th Cir. R. 3-6 is in conflict with the expediting FRAP principle and with the summary disposition practice adopted by Circuits. This Court should hold 9th Cir. R. 3-6, in part of its "any time" clause, unlawful and vacate the court of appeals order at issue and reverse the affirmance.

CONCLUSION

This petition should be granted; the court should reverse the court of appeals affirmance. The court may declare the uniform legal test under res judicata doctrine, adopting the legal test suggested and justified by Petitioner.

Respectfully submitted,

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DATED: June 16, 2026