No. **09-6525**

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.

The Superior Court of Los Angeles County,

Respondent

Los Angeles County,

Real party of interest.

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of California

Motion to Reconsider Denial of in Forma Pauperis Status Pursuant to Rule 39.8

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Petitioner (pro per) and Appellant/plaintiff

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A Introduction.

On October 20 2009, the Supreme Court denied petitioner's motion to proceed in forma pauperis pursuant **to Rule 39.8** and dismissed the petition for writ of certiorari no 09-6525, **but** the use of Rule 39.8 **was inappropriate in this case** because **neither** the petition **nor** the statement of jurisdiction were frivolous, malicious or repetitive, so petitioner **moves** this court for an order reconsidering the denial of in forma pauperis, granting the in forma pauperis status, vacating the dismissal of the petition and granting the petition for writ of certiorari (or at least reconsidering the denial of the IFP motion and denying the petition summarily).

Petitioner would like also to point out an error/confusion he made **in his disfavor** that will leave no doubt about the well-founded of his petition**.** Petitioner made no difference in his petition between an **ex parte** application for **alternative (**mandamus**)** writ of mandate for which the provision of the California Constitution requiring **a written and motivated decision** [Cal Cont. art. VI & 14**] does not apply**, and a petition for **peremptory** (mandamus) writ of mandate (he had filed) for which the provision of the California Constitution requiring a written and motivated decision **does apply** [as explained in *Funeral Dir. Assn. v. Bd. Of Funeral Dirs. (1943) 22 C. 2d. 104, (see App. A)*]. And he mentioned a case referring to an **ex parte for alternative** writ of mandate [*Kingston v. Dept. of Motor vehicles (1969)*

271 Cal . 2d 549, stating: '*It is settled that a court may deny* ***an exp arte*** *petition for* ***<u>an alternate writ of mandate</u>*** *'****out of hand****' when it appears* ***at the face of the petition*** *that the writ will not be issued…(Pet. Cert. p. 17)*] although his petition for writ of mandate was a petition for a **peremptory** writ of mandate, and he asked the Supreme Court to find the summary denial of his petition 'unconstitutional' although the California Supreme Court has already found that the determination of a peremptory writ is a '***determination of a cause***' for which the provision of the California Constitution requiring **a written and motivated decision** applies - the correction of this error will also leave no doubt about the violation of the due process (see part B 3 and 4). Petitioner will now review the different possible 'abuses' mentioned in rule 39.8 to demonstrate the well-founded of his petition and motion to proceed in forma pauperis.

<u>B Was the petition frivolous? (No).</u>

Rule 39.8 states: '*If satisfied that a petition for writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is* ***frivolous*** *or* ***malicious****, the Court may deny leave to proceed in forma pauperis*'. The term '**frivolous**' is taken from the general in forma pauperis statute 28 USC 1915 (e) (2) and means '*based on an indisputable meritless legal theory* ' or '*whose factual contentions are clearly baseless*', or more simply put a frivolous petition 'lacks arguable basis either in law or in fact'.

1) The arguable basis in fact and law for the entry of default.

It is obvious from the unopposed petition and record that the Los Angels County did **not** file an '**answer**' to the first amended complaint after the Superior Court sustained the first demurer with leave to amend (Pet. Cert p. 7), and therefore that, according to California **CCP 471.5** (Pet. Cert p. 6), the LA County defaulted 30 days after the filing and service of the amended complaint **(and this during 7 months at least). CFPP no 21.19 (2)** states: '*Answer to Amended Complaint. The defendant or cross defendant* ***is required to answer the amendments****, or the complaint …as amended, within 30 days after service, …, and judgments by default may be entered on failure to* ***answer*** *as (CCP 471.5 (a)).* ***CCP 471.5 refers only to the filing of an answer*** *to the amended complaint and* ***does not authorize the filing of a demurrer****. This is also true of its predecessor statute, former code 432.*']. Again this make sense because the filing of a (almost identical) demurrer on a (almost identical) amended complaint after the first one was sustained **with leave to amend** is nothing else than an attempt to avoid an appeal (on the leave to amend issue) and to have the Court reconsider its initial order **without having to follow the requirements of CCP 1008** which are to present new facts, law or circumstances and explained why they were not presented earlier, - and this attempt is dishonest of course.

Petitioner mentioned an imprecision of the law on the '*different type of*

amended complaints' (CCP 471.5, 472) (Pet. Cert. p. 12-13), but this imprecision has been clarified by the California Supreme Court very early on *in* ***McGary v. Pedrorena (1881) 58 C. 91*** stating '*in order to give force and effect to both of these sections of the code (471.5 formerly 432 and 472), we must hold that sect. 472 applies to amendments made before answer filed and before trial of an issue of law upon a demurrer, and that sect. 432 (471.5) applies to amendments made after an answer is filed, or after the trial of an issue of law upon a demurrer to a complaint*.' There is therefore no doubt that **CCP 471.5 refers** to an amended complaint filed '*after an answer is filed****, or after the trial of <u>an issue of law</u> upon a demurrer*** *to a complaint'* [and applies here]; while **CCP 586 a 1) and CCP 472 refers** to an amended complaint filed '*before answer filed and before trial of an issue of law upon a demurrer'* [in the California Code of Civil Procedure annotated CCP 586 is cross-referenced with CCP 472, but not with CCP 471.5]. Since CCP 472 does not address the default issue (as CCP 471.5 does), the law had to have CCP 586 a) 1 for the CCP 472's type of amended complaints [and CCP 586 was initially named CCP 872 probably to show the relation with 472]. The evidence and statute (CCP 471.5) justifying the entry of default **are clear, certain and positive** evidence and law, which are the requirements for the issuance of a writ as seen below.

If the Honorable US Justices think about the issue just 5 minutes, they will conclude that **there is no <u>honest</u> reason** to allow the filing of a

demurrer on this **471.5's type** of amended complaint after the first one was sustained with leave to amend because: **1) If the amended complaint** corrects the complaint fault exactly as the judge requested it, then **for the judge** the amended complaint **is free of objection appearing at the face of the complaint**, and there is no need to ask the judge to rule again on the technical validity of the complaint and an answer should be filed. **2) If the amended complaint** does not comply with the judge order, then the defendant can move to strike the amended complaint for failure to comply with the court order sustaining the demurrer with leave to amend [*Kronsberg v. Milton J. Wershow Co. (1965) 238 Cal. App. 2 d 170, 173*]. And **3) If the amended complaint** corrects (or not) the complaint's fault as requested by the judge and at the same time adds or changes allegations, causes of action,, then it is not anymore a CCP 471.5's type of amended complaint, it is CCP 472's type of amended complaint because the addition or change of facts, causes of action,, creates new possible issues of law that have not been addressed by the judge or answered (the amendments are then amendments before trial of the created possible issues of law), so of course a new demurrer can be filed on this type of amended complaint; the Court will note also that the addition or change of facts, causes of action,, creates new circumstances and CCP 1008 does not apply anymore; but this is not the case here.

In this case, the amended complaint is almost identical to the initial complaint (exactly same facts, same cause of action,) since the

amendment requested was to present a statute imposing liability on the County other than CC 1714, the statute petitioner had presented in conjunction with GC 815.2. Petitioner had mentioned also GC 815.6 in his complaint, so the amendment was only a slight modification of the 3 paragraphs on the existence of the duty, - the demurrer to FAC did not even address this amendment. And the demurrer to FAC **was also almost identical to the first one** since the **2 notices** stated that **the demurrer is made on the grounds** that: (1) the complaint fails to state facts sufficient to constitute the cause of action, and (2) the complaint is uncertain. And the 2 memoranda of points and authorities stated that **(1)** the complaint is barred by principle of res juridicata; **(2)** The allegations subsequent to the previous lawsuit filing in 2-2004 do not constitute negligence. The only new paragraphs in the 2nd demurrer are: **(a)** the complaint is not timely filed [which the Court surely understands would not have been welcomed in the first demurer <u>that was filed more than 20 days late</u> (!), and shows that the LA County's lawyer has a very short memory]; and **(b)** the plaintiff has not sufficiently pled compliance with applicable claims statute – both of which could have been presented earlier since petitioner did not change his allegation of claims filing in paragraph 53 of the initial complaint!

So the new demurrer violated without any doubt **CCP 1008** forbidding the filing of a motion to reconsider if the moving party cannot present <u>new or different facts, circumstances or law while explaining why they were not</u>

presented in the earlier motion. It is also obvious that the demurrer was filed for a dishonest motive (to delay the proceeding, harass petitioner,,) because the LA County did not re-noticed the demurrer for more than 7 months after the stay ended although there is a damage increasing by $20 000 every month. If the LA County had filed its demurrer for an honest reason, it would have noticed it as soon as possible to end the case and to lower the cost if the dismissal was not granted.

California Rules of Court, Rule 3.1320 d requires a demurring party to notice *its demurrer 'within* 35 days of the filing **or at the earliest date available'**, so the demurrer cannot even be considered timely for default purpose under CCP 586 a) 1 for lack of '***responding***' **properly** within the required time (since the filing of the demurrer is undissociable from the noticing), and the entry of default is also justified on this ground. As a parenthesis CFPP no 21.19 (2) also states: *Nevertheless, a demurrer with or without answer may be filed [see Johnsons v. Morgan (1961) 190 Cal. App. 2d 94-97, 11 Cal Rptr 673]. Since the filing of a demurrer as well as an answer prevents entry of default (see CCP 586 (a) (1))*' (Pet. Cert p. 12); this is true, of course, for CCP 472's type of amended complaints, and the case *Johnsons v. Morgan* is a case with an amended complaint **filed before any answer was filed and before the judge ruled on any demurrer issue**, so this remark does not contradict the clarification of the California Supreme Court *in* ***McGary v. Pedrorena (1881) 58 C. 91,*** and the entry of default is justified.

2) The arguable basis in fact and law for the writ of mandate.

CFPP section 358.31 states that **the essential elements** of a writ are **(1) the existence of duty** on the respondent and **(2) the demonstration of the right to writ by clear, certain and positive evidence [**'*The petition for writ of mandate must demonstrate the right to a writ* ***by clear, certain and positive evidence.*** *California Federation of Teachers v. Oxnard Elementary Sch. (1969) 272 Cal. App. 2d. 514, 545,* see CFPP 358 .31 (1)]. So here again the arguable basis in fact and law for the issuance of **peremptory** writ of mandate is obvious **(a) because the duty on the LA County and evidence related to the entry of default were clear … [**CCP 471.5 imposed a duty on the LA County **to answer** the amended complaint within 30 days, and justified the entry of default, and CRC R 3.3120 d of course imposed also on the county a duty to notice its demurer at the earliest available date,], and **(b) because** the Superior Court '*is under legal duty to apply* ***the proper law*** *and it may be directed to perform that duty by writ of mandate'* [see CFPP 358.32], so it had a duty to apply CCP 471.5 after the County did not answer within 30 days (for 7 months).

The proper and only remedy when the Court fails to enter default is to file a petition for writ of mandate at the Appeals Court [see **note 133 for CCP 1085**, '*Entry of default judgment by clerk is ministerial act which may be compelled by mandamus. W.A. Rose Co. v. Municipal Court for Okland-Piemont Judicial Dist.,…(App. 1 Dist 1959) 1 Cal. Rptr. 49, …'*. **And** '*Where the time within*

which a defendant, appearing generally in an action, may answer or demur, has expired, and no answer or demurrer has been interposed, the trial court must enter default, and the refusal to do so is a refusal to perform a duty, and a mandamus lies to compel performance thereof. California Pine Box … Co. v. Morgan (App. 1910) 13 Cal. App. 65 …']. **CCP 1086** also states: '*the writ must be issued* ***in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law***', and here it is obvious that petitioner had no other plain, speedy and adequate remedy to have the Superior Court enter default, so the Court of Appeals **had to issue the peremptory writ** of **mandate to compel the entry of default that was justified**.

Petitioner asked for a peremptory writ [an order **commanding the Superior Court to enter default]** in his petition (App. C, p. 3) because he had already asked **ex parte** the Superior Court Judge to order the clerk to enter default, so there were **no need** for an alternative writ asking the Court to show cause why default should not be entered, the Court and the County had already responded to this question. Petitioner did explain in his petition that he had already asked ex parte the Superior Court to order the entry of default as required by CRC r 8.486 a 1 (App. C, p. 2), and he had served both the Superior Court and the LA County with the petition for a writ of mandate which they were expecting already, so they were on notice and could have easily responded or opposed the petition within 10 days or even 5 days as required, but they did not. CFPP states also that '*the opposition from the*

party adversely affected will determine whether the Court issues the peremptory writ', so given there was **no opposition at the Appeals Court** (and that the Court could have requested one if need be)**, the Court had all the essential elements to issue the writ, and the** arguable basis in fact and in law for (and the right to) the issuance of the peremptory writ was obvious.

3) The arguable basis in fact and law for the violation of the California Constitution.

Petitioner argued that the ***summary*** *dismissal of his petition for a writ of mandate*' violated California Constitution art. VI sect. 14 (Pet. Cert. p. 8) and this is now obvious at the light of the confusion made by petitioner. The California Supreme Court has already agreed that **the determination of a peremptory writ of mandate was a 'determination of a cause**' which required a written and motivated decision (Cal. Const. Art. VI sect. 14) [see *Funeral Dir. Assn. v. Bd. Of Funeral Dirs. (1943) 22 C. 2d. 104, 'The Supreme Court's initial action in issuing or declining to issue a prerogative writ on* ***an ex parte application*** *does not constitute such 'determination of a cause'* (Cal. Const. Art. VI sect. 14) as to require a written decision. *It is only after an alternative writ has been issued that the matter becomes 'a cause,' the determination of which, i.e.,* ***the granting or denying of a peremptory writ***, *requires a written decision'*. (App. A)].

Again the Superior Court and the County had already responded to the request to enter default, and the petition clearly requested an **order**

commanding the Superior Court to enter default, so the determination of the peremptory writ was (**a very simple**) '*cause*' (application of CCP 471.5 justifying the entry of default in this context for failure to answer within 30 days as seen above). The petition was presented with an excerpt of record (App. D) and a request to take judicial notice containing all the necessary documents to take a decision [including the 2 demurrers with the same contents, the court order sustaining the demurrer with leave to amend, the complaint and amended complaint, the ex parte requesting entry of default, the opposition, and the court order denying the 'alternative writ' or request to enter default,,], so the provision of California Rule of Court **Rule 8 .486 b 4** ['*If the petitioner does not submit the required record or explanation or does not present facts sufficient to excuse the failure to submit them, the court may* ***summarily*** *deny a stay request, the petition or both*'] did not apply here, and did not justify the summary decision, so there is no doubt that the Appeals Court abused its discretion and violated the California Constitution when it issued a summary decision.

4) The arguable basis in fact and law for the resulting violation of the US Constitution – right for a due process.

Petitioner argued that the violation of the California Constitution resulted in a violation of the Fourteenth Amendment (right to a due process) of the US Constitution (Pet.Cert. p. 17, 24), and he cited a similar case *Burn v. Ohio 360 US 252 (1959)* in which the US Supreme Court had also deducted

the violation of the due process (principle of Equal Justice) from the violation of the Ohio Constitution in a similar context [‘*Since a person who is not indigent may have the Ohio Supreme Court consider his application for leave to appeal from a felony conviction , **denial of the same right** to this indigent petitioner solely because he was unable to pay the filing fee **violated the Fourteenth Amendment**’* page 252, later ‘*The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants **has no place in our heritage of Equal Justice Under Law**’*]. Here it is the same, since some petitioners obtain motivated decisions conformed to the Constitution on peremptory writ, the denial of the same right to petitioner, a pro se refugee, who had a valid claim of entry of default and a petition for a peremptory writ with all the essential elements as seen above, ***violated the Fourteenth Amendment***’, and such a practice ‘***has no place in our heritage of Equal Justice Under Law*’**. The attempt to have petitioner deported on a full of lies deportation order during the proceeding referred here and the treacheries of the US Attorney office to make petitioner loose his only chance in 6 years to be helped by lawyer should also raise a serious issue of due process for the US Supreme Court Justices who have been around for sometimes and know what some can do to win a lawsuit, cover up wrongdoings, and hurt an individual (!).

To conclude part B, there is therefore no doubt that the petition for writ of certiorari was **not frivolous**, there were arguable basis in facts and

in law justifying **(1) the entry of default**, **(2) the right to a peremptory writ of mandate** compelling the Superior Court to enter default, **(3) the right to a written and motivated decision** or the violation of the California Constitution, and **(4) indirectly the violation of the US Constitution's Fourteenth Amendment** as in Burns.

C Was the petition malicious? (No, but the petition raised a very sensible issue for the US Supreme Court).

In Shonfeld v. City of Vallejo (1974) 50 cal App. 3d 401, 404 411, the Court defined '*malice*' to be '***a conscious intent to deceive, vex, annoy or harm injured a party in his or her business***'.

1) Was the petition Malicious toward the 'respondents'?

The Supreme Court Justices cannot pretend that petitioner attempted to '***deceive, vex, annoy or harm injured'*** the LA County or the Superior Court ***'in his or her business',*** when obviously the respondents **did not even oppose** the petition, and the LA County has, after all, filed a demurrer when it is not allowed according to CCP 471.5 and then delayed at least 7 months the noticing of its demurrer which is not allowed either according to CRC R 3.1320 d. On the contrary, it appears clearly that it is the LA County (with other administrations) that attempted to '*deceive, vex, annoy or* ***harm injured'*** petitioner *'in his or her business***'** and to take advantage of petitioner's pro se status when it filed its unauthorized demurrer and then

delayed its noticing for so long to try to have him unfairly deported (with a full of lies deportation order) in the meantime (!).

2) Was the petition Malicious toward the US Supreme Court Justices?

The question is therefore whether the Supreme Court Justices felt that petitioner attempted to *'deceive, vex, annoy or harm injured'* the US Supreme Court Justices *'in their business'* **or at least to '*vex or annoy*' them** when he raised the question of the '***unconstitutionality of summary decision***' knowing that out of about **8000 petitions** the US Supreme Court receives during a year, it denies **summarily** almost **7920** according to a recent New York Times article dated 9-28-09 from Adam Liptak in which he explains that the US Supreme Court now renders only **80 opinions** a year down from about 150 in the early 1980s. It is important to address this question because there is no doubt that the Honorable US Justices know that these 7920 **summary** decisions are **exactly the opposite of justice** [California Form of Pleading and Practice (**CFPP**) states **in section 51.17 [b]**: *'when a decision treats an issue in a summary and conclusory manner, and is virtually devoid of reasoning, its* ***authoritative status is undetermined*** *[City of Berkeley v. Superior Court (1980) 26 Cal. 3. d 515…]. When an opinion addresses an issues of first impression without discussing precedent form other jurisdiction or the policy implications of its rule, the decision* ***is not entitled to deference*** *[McHugh v. Santa Monica…]'*, **and that these summary decisions** have a great impact on the relevance, credibility, and

legitimacy of the Court (some experts have argued that the US Supreme Court had lost its relevance – its purpose - over the years).

It is important to address this question **also** because there is very little doubt that **the Honorable US Justices are aware** that petitioner has presented a platform for proposals to the UN General Assembly including a research project proposal (App. G) to improve the US justice system and denounced some of the problems of the Court whose Justices are **(1) unaccountable** for denying summarily those 7920 petition a year about (since they have the discretion to deny summarily any petition, they cannot be held accountable for any damage they may cause, no matter how incorrect their decision may be, how malicious it may be, or how hurtful it may be for the petitioner), **(2) unaccountable** for any damage the remaining 80 written opinions they do render during a year may cause (since they have full judicial immunity for these motivated decisions, again no matter how incorrect their opinion may be, how malicious it may be, or how hurtful it may be for the petitioner), and **(3) hired for life** while they do not insure the coherence between the lower courts' decisions because of the very small amount of cases they review each year [the age of the judges of the European Court of Human Rights is limited to 70 and their mandate is renewed every 5 years, I believe]. So yes, knowing all this makes it important to respond to the question of whether the US Justices felt that petitioner intended to vex or annoy the US

Justices in their business.

Petitioner did **not**, of course, file his petition to vex or annoy the US Supreme Court Justices, his objective was solely to try to obtain justice for the grave prejudice he suffered over 7 years in the US, and to have the Court address a dishonest behavior and practice from the Appeals Court that do not motivate their decision even though the constitution requires them to do so, and it would not requires too much work of them while saving a lot of trouble for higher courts and the parties. Petitioner, of course also, cannot pretend that he did not think about the fact that the Supreme Court Justices might find the issue of the petition 'annoying', but this should not justify the denial of in forma pauperis status pursuant to R 39.8. The US (and other rich countries) Justice system is already extremely unfair for the poor (no efficient legal system, difficult access to justice,) [as the US justices know or should know], and this affects how the people behave toward the poor and indirectly how the US (and other rich countries) behaves toward poor countries which slows down our effort to defeat poverty, so the unfairness of the justice system for the poor is a critical issue that has a worldwide impact, **and an impact on our effort to resolve our global problems which should be of great concern to the US Justices**. The use of rule 39.8 (whose adoption by the Court was not without opposition within the Supreme Court itself **for right reasons**) is therefore certainly not justified on the ground that the petition was malicious.

D Did petitioner abuse the certiorari process by filing 'repetitive' (4) petitions or is the allegation of poverty untrue? (No).

1) The 3 previous petitions for writ of certiorari.

Petitioner did not try to hide that he had filed **already 3 petitions** at the US Supreme Court including the most recent one asking also the Court to compel the entry default against the LA County after it had failed to respond on time to the initial complaint in early 2007, but here again the filing of 4 petitions over a 5 years period given the context of the previous petitions and the imperfections of the justice system cannot be judged abusive. Especially when we compare this number with the number of the abusive cases that led the Court to adopt rule 39.8: *In re McDonald, 489 US 180 (1980)*, **73** in forma pauperis petitions and 19 petitions for extraordinary relief over an 18 years period; *Wrenn v. Benson, 490 US 89 (1989),* **22** petitions for certiorari over 3 years, etc [see Supreme Court Practice 9th edition, page 567]. Moreover, the 3 previous petitions were not frivolous or malicious either, even if petitioner, **a pro se who does not have a Phd in law from Harvard**, cannot be sure that his petitions were 100% perfect from a technical point of view. The first two petitions clearly raised a contradiction between existing appeals court decisions, errors of the lower courts, and important questions of law which are (or can be) grounds to petition the US Supreme Court. And of course the refusal to order the entry of default when it is deserved after an unjustified

filing of a response more than 20 days after the deadline led (exactly as in this case) to an obvious violation of due process justifying a petition to the US Supreme Court also.

2) The petition for rehearing included in Appendix 10.

There is a possibility that the Court also reacted negatively to the fact that petitioner put in appendix F 10 the petition for rehearing filed at the Ca9 Appeals Court in his related deportation case (08-55492) and interpreted it as an attempt to have the Court rule on this case as well since this case may, in the worst case scenario, end up in front of the Supreme Court also. If it is the case, petitioner would like to stress that it was not his intention at all, he felt he had to put the petition to give the Court an idea of the issues of the deportation case and to establish his good faith as well as the well-founded of t**he payment of a $2 840 000 compensation for the injustice he has suffered**. The US Supreme Court, it seems, reacts negatively to lengthy explanations on petitions for certiorari, but here it should keep in mind the great injustice petitioner is victim of, his pro se status and the many years of persecutions and suffering he has been subjected to, and forgive what may have seemed to be a lengthy petition.

3) The allegation of poverty is true.

It is obvious also that petitioner suffered a very grave prejudice and that his allegation of poverty is true. For more than 16 years he has been

victim of persecutions in France and then here, and lost everything he had job, savings, and retirement pension fund,, and he was even unfairly ordered to pay an important amount of money to the administration that illegally fired him and had engaged in massive frauds - all this of course to cover up the former Senator President of the administration who was eventually sent to jail (!), so yes his situation is very precarious, and his petition is justified.

E Was the jurisdictional statement frivolous or malicious or repetitive? (No).

Finally, petitioner must also address the issue of the well-founded of the jurisdictional statement. Here the jurisdiction statement is written in the Court form, and the jurisdiction **is invoked under 28 U.S.C.§1257(a), so this was not a problem.** The only jurisdictional problem is, it seems, whether petitioner had raised the federal question or violation of the US Constitution in the lower courts – known as the '***not pressed nor passed below rule'***. Petitioner, **a pro se without a Phd from Harvard Law School**, had ten days to appeal the summary denial of his petition for writ of mandate, so it was impossible for him to think about and plead the violation of due process when the pleading of the violation California Constitution involved a very difficult work already – again he missed the difference between alternative writ and peremptory writ and the constitution's violation implication, so he cannot be held responsible for this. In the case he cited *Saunders v. Shaw 244 US 317, 320 (1917) see SCP p. 196*, the Supreme Court

explained that it would be unfair to apply this rule when obviously the petitioner could not possibly present the federal question in the lower court.

Moreover, in this case the respondent that had a duty to oppose the jurisdictional statement according to rule 15.2 did not file any opposition, and **the Supreme Court has the discretion to waive this requirement [***see Illinois v. Gates 462 US 219 (1983), 'Likewise, in Vachon v. New Hampshire, 414 US (1974) , the Court summarily reversed a state criminal conviction on the ground, not raised in the state court, or here, that it had been obtained in violation of the Due Process Clause of the Fourteenth Amendment. The court indicated in a Footnote, Id. , at 479, n. 3, that* ***it possessed discretion to ignore failure to raise in state court the question on which it decided the case****.'].* In this case, the court has good reasons to do so. And again the attempt to have petitioner deported on a full of lies deportation order during the proceeding referred here and the treacheries of the US Attorney office to make petitioner loose his only chance in 6 years to be helped by lawyer should also raise a serious issue of due process for the Supreme Court, so this cannot be a ground to find the jurisdictional statement frivolous or malicious or repetitive. Finally, and again this case is very similar to *Burn v. Ohio 360 US 252 (1959)*, in which the Court did not even bother to address this issue since it considered a letter from the clerk office as the actual decision of the Ohio Supreme Court and then derived the violation of the Equal Justice principle.

F Conclusion.

Neither the petition nor the statement of jurisdiction was frivolous, malicious or 'repetitive', so **the evocation of rule 39.8 was abusive and inappropriate**. It appears clearly from the above explanation **that, first**, the entry of default was justified by clear, certain, and positive evidence; **that, second**, the essential elements to issue a peremptory writ were all present in petitioner' request for writ of mandate; **that, third**, event though petitioner made a confusion between alternative writ and peremptory writ, **an expert could easily deduct from petitioner explanation** that he had already filed an ex parte at the Superior Court and therefore that he was asking for the issuance **of a peremptory writ** requiring a written and motivated decision, and therefore that the violation of the California Constitution was obvious, **and finally that** the resulting violation of due process was also obvious as in Burns v. Ohio.

The use of rule 39.8 may therefore be due to the issue raised in the petition and to the fact that the US Supreme Court Justices knew about petitioner' work and proposals made to the United Nations General Assembly, and possibly felt that he had tried to vex them or annoy when he indirectly and involuntarily reminded them that the almost 7920 summary decisions they render a year (versus 80 written opinions) are not the expression of justice, <u>but the US Justices should be assured that petitioner's sole purpose here was/is to try to obtain justice for the grave prejudice he</u>

suffered over 7 years, and have the Court encourage Appeals Court to render more precise and motivated decisions that are conformed to the constitution **for everyone's benefits**.

The motion (and petition) raises 3 important California procedural issues (mentioned in B 1) that should be clear for the Judges in California including the more than 100 Superior Court Judges in LA, so I have respectfully asked Mr. Bennett, the Superior Court Counsel (see App. E), to (independently from the County) oppose this motion (and in particular the 3 procedural issues of the entry of default) **if they had any honest and meaningful arguments contradicting the ones I presented above**, and if not (and the County does not present either a honest and meaningful opposition to this motion) to simply allow the entry of default against the LA County without waiting for this Court ruling on the motion. If the LA County and the Superior Court have honest and meaningful arguments justifying that default should not be entered, this Court that oversees 50 states justices and knows how the other states handle the default on CCP 471.5's type of amended complaints can easily issue a short order clarifying the issues for everyone's benefits.

Petitioner is a pro se who is not an expert in law, so preparing a petition to the US Supreme Court is very hard and time consuming for him, especially in the context of previous grave injustices over a long period of time, so the imperfection of the petition is not voluntary, and does not mean

that the petitioner is not a victim of grave wrongdoings or that his claims are not justified as seen above.

Petitioner therefore respectfully requests that the Court reconsiders its denial of in forma pauperis status pursuant rule 39.8, grants the in forma pauperis status, vacates the dismissal order of the petition for writ of certiorari, and grants the petition for a writ of certiorari (or at least that the Court reconsiders the denial of the IFP motion and denies the petition summarily).

Respectfully submitted,

Date: November 5 , 2009

Pierre Genevier

Appendix A: 2 pages of case *Funeral Dir. Assn. v. Bd. Of Funeral Dirs. (2 p.).*
Appendix B: 3 pages of case *McGary v. Pedrorena (1881) 58 C. 91(3 p.).*
Appendix C: First 3 pages of the petition for a writ of mandate (3p).
Appendix D: 2 pages of the excerpts of record filed with the petition (2p).
Appendix E: Letter to Mr. Bennett, Superior Court Counsel (2 p.).
Appendix F: Letter to Mr. Kalunian, County Counsel (2 p.).
Appendix G: Internet link to the UN letters only for reference. Letter to the United Nations General Assembly dated 3-28-8; [http://pgenevier.110mb.com/npdf/letunga3-25-08.pdf]; Letter to Mr. Bloomberg dated 3-28-08 [http://pgenevier.110mb.com/npdf/letblo3-25-08.pdf]; and letter to the UNGA dated 2-5-09; [http://pgenevier.110mb.com/npdf/letunga2-5-09.pdf].

This motion is at http://pgenevier.110mb.com/npdf/motreconsisupcovslac-ed2-11-5-09.pdf.

No. 09-6525

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.

The Superior Court of Los Angeles County --- Respondent

Los Angeles County, ---Real party of interest.

PROOF OF SERVICE

I, Pierre Genevier, do swear or declare that on this date, November , 2009, as required by Supreme Court Rule 29, I have served the enclosed **MOTION to Reconsider Denial of IN FORMA PAUPERIS status pursuant to Rule 39.8** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by hand delivering or faxing or emailing or mailing the above documents.

The names and addresses of those served are as follows:

Mr. Frederick Bennett, Attorney for Los Angeles Superior Court, and **Judge Red Recana,** Superior Court, 111 North Hill street, RM 546, Los Angeles CA 90012 (By hand delivery).

Mr. Maranga and Mrs. Ellyatt, Attorney for the Los Angeles County (defendant), at 5850 Canoga Avenue, suite 600, Woodland Hills, CA 91367, Fax : (818) 380 0028.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November , 2009

Pierre Genevier

No. 09-6525

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.

The Superior Court of Los Angeles County --- Respondent

Los Angeles County, ---Real party of interest.

"As required by Supreme Court Rule 33.1(h), I certify that the document contains ___6045__ words and **less than 30 pages**, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).
"I declare under penalty of perjury that the foregoing is true and correct.

"Executed on _____, 20___.

_____

Pierre Genevier

Pierre Genevier

711 South Westlake Ave., #205

Los Angeles, CA 90057-4128

Email: pierre.genevier@laposte.net

Mr. Frederick Bennett
Attorney for Los Angeles Superior Court
111 North Hill Street, RM 546,
Los Angeles, CA 90012

Los Angeles, November 5 2009

Copy : Judge Mel Red Recana, Dept. 45.

Object: Motion to reconsider the denial of in forma pauperis in US Supreme Court case no 09-6525 related to case BC 364 736; possible response due within ten days; important California procedural issues; and entry of default in BC 364 736.

Dear Mr. Bennett,

Please find attached the motion to reconsider the denial of in forma pauperis status in US Supreme Court case no 09-6525 related to case BC 364 736.

The motion raises, among other issues, 3 important California procedural issues (related to the entry of default against the LA County in BC 364 736): **(1) whether CCP 471.5** allows the filing of a (almost identical) demurrer on an (almost identical) amended complaint after a first demurer was sustained with leave to amend, and requires the entry of default in this case; **(2) whether** the filing of a (almost identical) demurrer on an (almost identical) amended complaint after a first demurer was sustained with leave to amend **violates CCP 1008**; and **(3) whether** a demurrer not noticed during 7 months can be considered **timely for default purpose** under CCP 586 a 1) when **CRC R. 3.1320 d** requires the demurring party to notice its demurrer within 35 of the filing **or at the earliest available court date** (see motion pages 6-10).

I have presented several existing California legal authorities that support my arguments and the fact that default should be entered in this case BC 364 736, so if you have good reasons to oppose the entry of default and have appropriate legal authorities that contradict the arguments and cases I presented in my motion, I would be grateful to

you if you could present them to the US Supreme Court (within 10 days), so that it can rule on the eventual unresolved issues or unclear application of the statutes mentioned. The Superior Court has probably more than 100 judges including some very experienced ones like Judge Recana, so I believe, it should have **its own and independent** (from the LA County's lawyer) **opinion (**in front of the US Supreme Court**) on these issues.** Especially in this particular case where there are possible legal malpractice and responsibility issues because Mrs. Ellyatt is the one who noticed her demurrer late and who filed it although it is not allowed according to CCP 471.5, so she may not be the right person to express the Superior Court's position**.**

Since the US Supreme Court Justices oversee 50 different states justice, they know if some states handle the issue differently, and if the California CCP and legal authorities on this matter need to be clarified, and if yes, they are in good position to do it fairly easily. **On the other hand,** if 'you' (the Superior Court) have **no reason** to oppose my motion and the arguments I presented (which I really hope because the legal authorities seem very clear on these issues), then, I hope that 'you' (the Superior Court, Judge Recana) will enter default without waiting for an answer from the US Supreme Court (provided that the LA County and its lawyer do not present unquestionable arguments opposing the entry of default and motion, of course). As you know, the LA County responded more than 20 days late in early 2007 already, so default was justified then already; and I have suffered a very grave prejudice over 7 years although I have shown by good faith immediately after the problems started in 2002, so the entry of default would not be unjustified or exaggerated now, on the contrary.

I thank you in advance for your understanding and remain

Yours sincerely,

Pierre Genevier

Att. 1: Motion to reconsider the denial of in forma pauperis in US Supreme Court case 09-6525 (42 pages); internet address,

http://pgenevier.110mb.com/npdf/motreconsisupcovslac-ed2-11-5-09.pdf

Pierre Genevier
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Email: pierre.genevier@laposte.net

Robert E. Kalunian
Acting County Counsel, County of Los Angeles
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Los Angeles, November 4 2009

Copy: LA County Supervisors **[**Mrs. Gloria Molina, Mr. Mark Ridley-Thomas, Mr. Zev Yaroslavsky; Mr. Don Knabe, Mr. Michael D. Antonovich]

Object: Irregularity in case BC 364 736 (negligence, P. Genevier vs. LA County), possible legal malpractice and responsibility issues, and entry of default in BC 364 736.

Dear Mr. Kalunian,

I take the liberty of writing you to mention some irregularities in case BC 364 736 in which I am the plaintiff against the LA County, and a questionable behavior from the lawyer representing you (Mrs. Ellyat from Maranga & Morgenrstern) which may raise legal malpractice and responsibility issues.

In 2007 I filed a negligence complaint against the LA County (it followed to 2 previous lawsuits, and it is related to a pending case against the County also at the CA9 Appeals Court, no 07-56730); the County did not respond on time, so I asked the Court to enter default after more than 20 days. The Judge refused to enter default (although 'you' had not opposed my ex parte for default), and later he denied my motion to strike the first demurrer and sustained the County's demurrer with leave to amend. I filed an almost identical amended complaint (FAC), but the County's lawyer, Mrs. Ellyatt, did **not** file **an answer to this FAC**, she filed a (almost identical) demurrer, which is not allowed according **to CCP 471.5**, and violates CCP 1008 forbidding repeated filing of motion without new fact or law…, and of course which is very dishonest, I believe (see. Att. 1). I asked the Court to stay this demurrer to the FAC hearing until the US Supreme Court rules on my first request to compel the entry of default, and the Court stayed it.

On 10-29-07 the US Supreme Court denied my petition and the stay ended, but Mrs. Ellyatt did not re–notice her demurrer to the FAC **at the earliest available date as required by CRC R 3.1320 d, and this during more than 7 months** (!) although she used the pending demurrer to avoid responding to the discovery questions (!). This was also very dishonest, I believe, especially in the context of the case [a complaint asking for damages that increases by $20 000 every month and the dishonest effort to have me deported on a full of lies deportation order by the co-defendant administrations ICE, AUSA offices…]. **On 5-30-08** I asked for another stay of proceeding in this BC 364 736 case because the Ca9 Appeals Court had appointed a pro bono lawyer in the related case and I wanted that this pro bono lawyer can review the Superior Court case also, and

hopefully sorts out all the various problems [I have offered several times to use an ADR procedure to try to resolve the issue (or settle the case) outside the Court system but your lawyer always refused!].

Unfortunately, the pro bono lawyer, a former AUSA colleague of the AUSA party in the related complaint 05-7517, had overlooked a conflict of interest and had to withdraw. So on 2-25-09 after the Court scheduled a status conference hearing, I filed on my own a new request to enter default on the ground that the County had not noticed its demurer on time, but this was denied. So I filed a petition for writ of mandate to compel the Superior Court to enter default based on **(1) the fact that CCP 417.5 does not allow the filing of a demurer on this type of amended complaint** and justifies the entry of default in this case, and **(1) on the fact** that the demurrer was not re-noticed on time (with a 7 months delay) according to CRC R 3.3120 d which justifies the entry of default under 586 a 1 also [please look at the attached motions to see the legal authorities that support these remarks if necessary]. The petition for writ was again denied summarily, and on 10-29-09 during our status conference, I asked verbally the Court to review this issue of the default under CCP 417.5, and the judge allowed (us) the parties to brief this issue.

The fact that your lawyer filed an unauthorized demurrer and then did not re-notice it during 7 months may raise possible legal malpractice and responsibility issues. It also may raise the issue of your counsel's integrity in the future - in short Mrs. Ellaytt error may influence her position more than the interest of her client, the LA County. It is already obvious that Mrs. Ellyatt and Maranga & Morgernstern have done everything they could to make sure the case would last as long as possible and assure them a more than $100 hourly fee for many hours plus the expenses during many years. So I would be grateful to you if you could review the issue of the entry of default and the 3 motions I am filing and attaching to my letter at the earliest date possible (there is 10 days to respond only, I believe), and eventually agreed to a joint stipulation authorizing the entry of default **– again default was already justified in 2007 when the LA County responded more than 20 days late to the initial complaint**.

Of course if you have unquestionable arguments (or cases) that contradict my arguments on the entry of default issue, I would be grateful to you if you could respond to the motion at the Supreme Court also, so that it can eventually rule on the issue (it may save us a lot of time in the worse case scenario). Over the past 7 years (since the dispute started with the LA County, the California DSS, and the INS), I have suffered a very grave prejudice although **I had shown my good faith immediately after the problems occurred in 2002**, and this litigation was very painful for me, so the entry of default would not be unjustified or exaggerated, and I hope that you will take that into consideration in your analysis as well. I thank you in advance for considering these matters and the motions attached to my letter and remain

Yours sincerely,

Pierre Genevier

Att. 1: Motion to reconsider denial of in forma pauperis status in the US Supreme Court case 09-6525 (28 pages), [http://pgenevier.110mb.com/npdf/motreconsisupcovslac-ed2-11-5-09.pdf]. Att. 2: Motion to strike the LA County demurer to FAC in case BC 364 736 (8 pages), [http://pgenevier.110mb.com/npdf/countycounsel11-5-09.pdf]. Att. 1: Renewed Motion to enter default in case BC 364 736 (8 pages) http://pgenevier.110mb.com/npdf/countycounsel11-5-09.pdf