

QUESTIONS PRESENTED

1. Since the issue of when an appealed judgment is “rendered” under Hawai’i law has been certified to and accepted for decision by the Supreme Court of Hawai’i and briefing is complete, whether this Court should defer consideration of this Petition until that court issues its opinion on that critical issue of state law?
2. Whether this Court should summarily vacate and remand this action to the Court of Appeals since that Court plainly erred in not finding that the Class’ final judgment was not entered in the district court pursuant to FRCP 58 until December 6, 1995, less than ten years before the judgment was transferred to Texas.
3. Whether a state sunseting law can terminate enforceability of a \$2 billion judgment on a federal human rights cause of action?
4. Whether federal law, not state law, determines when a federal judgment is “rendered” for state sunseting purposes.

< Wiig - plain language >

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 536 F.3d 980 (9th Cir. 2008). 1a. The order of the United States District Court for the District of Hawaii entered June 27, 2006 is unreported. __ a.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Ninth Circuit reversing the district court's order was entered on July 31, 2008. A timely petition for rehearing and rehearing *en banc* was denied on September 11, 2008. This Court extended the time for filing this Petition to February 9, 2009. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

Hawaii Revenue Statute, § 657-5:

Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree.

Federal Rule of Civil Procedure 58(b)(2):

Subject to Rule 54(b), the Court must promptly approve the form of judgment, which the clerk must promptly enter, when:

- (A) the jury returns a special verdict or a general verdict with answers to specific questions; or
- (B) the court grants other relief not described in this subdivision (b).

Federal Rule of Civil Procedure 69(a)(1):

A money judgment is enforced by a writ of execution unless the court directs otherwise. The procedure on execution – and in proceedings supplementary and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Federal Rule of Civil Procedure 82:

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for purposes of 28 U.S.C. §§ 1391-1392.

INTRODUCTION

The Court of Appeals held that a \$2 billion federal court judgment in favor of a Class of 9,539 human rights victims against the Estate of Ferdinand E. Marcos was no longer enforceable under Hawaii law based on its prediction of Hawaii law. Because the Hawaii Supreme Court has agreed to decide a certified question on the same issue in a case consolidated with the Class case, this Court should defer decision on this Petition until the Hawaii Supreme Court has ruled. Certiorari is appropriate in this case because the Court of Appeals failed to follow this Court's decision in *United States v. Indrelunas*, 411 U.S. 216 (1973). The Court of Appeals erred in permitting Revelstoke's intervention in the Hawaii proceeding based on its failure to consider when a Rule 58 judgment was signed and entered by the clerk of court in the consolidated cases there. The Court of Appeals also failed to follow this Court's decision in *Borer v. Chapman*, 119 U.S. 587, 602 (1887), which held that, for state sunseting purposes, time does not begin to run on a judgment until all appeals are final. As such, the Court of Appeals decision is in conflict with two decisions of the Fifth Circuit, *Andrews v. Roadway Express Inc.*, 473 F.3d 565 (5th Cir. 2006) and *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399 (5th Cir. 2001).

STATEMENT

The instant class action, together with several other actions filed by individuals, alleging federal human rights claims against Ferdinand E. Marcos,¹ the former president of the Philippines, were consolidated for trial and tried in three stages before a federal jury in Hawaii between 1992 and 1995. On February 3, 1995, the district judge entered judgment for almost \$2 billion in favor of a Class of 9,539 Filipinos who had been tortured, summarily executed or disappeared during the 1972-86 period of martial law in the Philippines. The Class' judgment included a permanent decree enjoining the transfer or disposal of the Estate's assets. Over the next 11 months judgments were entered in the other consolidated cases. Pursuant to Fed. R.Civ.P. 58(b), a final judgment in the consolidated cases was entered by the clerk of court on December 6, 1995 against the Marcos Estate as directed by the district court. *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 910 F.Supp. 1460, 1469 (D. HI 1995). The Class' judgment was appealed to the Ninth Circuit Court of Appeals and affirmed on December 17, 1996. *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996). The mandate was filed in the district court on January 8, 1997.

Collection of the judgment proved exceedingly difficult. The Marcos heirs refused to pay the judgment or give depositions in aid of execution. The Marcos heirs continued "a pattern and practice of secreting the Estate's assets through off-shore corporations and cronies to hold title to property." Order of June 27, 2006 at __ a. The Marcos heirs were held in civil contempt for transferring assets of the Estate in violation of the permanent injunction. *Hilao v. Estate of Marcos*, 103 F.3d 762 (9th Cir. 1996).

In April 2005, the Class transferred its Hawaii judgment to the Northern District of Texas and initiated a diversity action against seven corporations, including Revelstoke Investment

¹ After Marcos's death in 1989, his Estate was substituted as the defendant.

Corporation, Inc., for declaratory judgment and forfeiture.² The complaint explained that the real estate they held was paid for and beneficially owned by Ferdinand Marcos (and now by the Marcos Estate) and for foreclosure on those properties. Between 1979 and 1986 Jose Y. Campos,³ a confidante of Ferdinand Marcos, purchased over 4,000 acres of real property in Texas for Marcos using Marcos money⁴ but titled the parcels of land in the names of seven Netherlands Antilles corporations which Campos controlled. Shortly after Marcos fled the Philippines in the “Bloodless revolution” of February 1986, Campos was sued by the Republic of the Philippines in Texas in a racketeering action to recover Marcos properties under Campos’s control. The action was dismissed two months later -- with no discovery taken -- based on a settlement with the Republic in which Campos returned over 200 corporations and pieces of real estate beneficially owned by Marcos as well as \$12 million. In return for a \$10 million bribe paid to a high Philippine official,⁵ Campos and his family received immunity from prosecution in the Philippines and were permitted to retain a dozen Netherlands Antilles corporations, including Revelstoke, which Campos now claimed as his own. Campos subsequently formed seven United States corporations as the successors to the Netherlands Antilles corporations which currently hold title to the real estate at issue.

In the Texas action Revelstoke contended that the Class’ Hawaii judgment was unenforceable under Hawaii law at the time it was transferred to Texas in April 2005 since more than ten years had expired since a judgment order was entered on February 3, 1995. In reaction

² *Del Prado v. BN Development Company, Inc.*, No. 05-234 (N.D.Tex.). On January 9, 2009 the Texas district court dismissed the complaint based on the Ninth Circuit ruling at issue here.

³ Jose Y. Campos was instrumental in setting up Arelma Inc., a Panamanian corporation, which held \$35 million of Marcos assets in a Merrill Lynch account for 28 years. See *Republic of the Philippines v. Pimentel*, 128 S.Ct. 2180, 171 L.Ed.2d 131 (2008).

⁴ Declaration of Imelda Marcos dated January 21, 2005.

⁵ Deposition testimony of Ferdinand R. Marcos, Jr. on June 20, 2007.

to the attack on the Hawaii judgment, the Class moved before the district court in Hawaii to extend its judgment. Revelstoke's attempt to intervene in the Hawaii action was denied. The Hawaii district court entered an order on June 27, 2006 extending the Class' judgment for ten years. __a.

The district court concluded that the Hawaii statute at issue, H.R.S. § 657-5, which provides for the lapse of state court judgments entered in Hawaii courts after ten years, was inapplicable by its own terms to the federal judgment entered on a federal cause of action in this case. __a. The court also held that the ten year period could not have begun "until issuance of the mandate of the Ninth Circuit was spread on the record of this Court on January 8, 1997," citing this Court's decision in *Borer v. Chapman*, 119 U.S. 587, 602 (1887). __a. Finally, the district court ruled, in the alternative, that good cause existed to extend the Judgment for ten years because "[t]he Judgment will not be ten years old until January 8, 2007." __a. Revelstoke did not contest the existence of good cause to extend the Judgment.

Revelstoke appealed to the Ninth Circuit which reversed and held that Hawaii judgment was unenforceable. It held that a federal judgment on a federal cause of action is subject to a state sunseting law. __a. It further held that Hawaii's H.R.S. § 657-5 applied to federal judgments and predicted that, under Hawaii law, a judgment is "rendered" under H.R.S. § 657-5 when a final judgment is entered in the trial court even though the judgment is appealed. __a.

The Class moved for rehearing raising several issues, including that the final judgment for the Class was not entered until December 6, 1995 and that the court should certify a question to the Hawaii Supreme Court as to when a judgment is "rendered" under H.R.S. § 657-5 since no Hawaii decision had ever interpreted that term in connection with an appealed judgment. The Ninth Circuit denied rehearing without comment.

REASONS FOR GRANTING THE WRIT

I. This Court Should Defer Decision on this Petition Until the Hawaii Supreme Court Answers the Question Certified to It.

In a case consolidated at trial with the instant action, the Hawaii Supreme Court has agreed to decide when an appealed judgment is “rendered” for purposes of Hawaii’s sunseting statute, H.R.S. § 657-5. Order of October 15, 2008 at ___a. On September 12, 2008 a motion to extend the judgment under H.R.S. § 657-5 was heard by the Hawaii district court in a case consolidated with the Class case in MDL 840. By order dated September 26, 2008, the Hawaii district court certified the following question to the Hawaii Supreme Court:

With regard to the time period for executing a judgment in H.R.S. § 657-5, does the time period begin after the appellate process is completed (because the appeal may provide relief in the form of damages not provided for in the original judgment and because the completion of the appellate process allows the judgment creditor to proceed without limitation to collect the judgment), or, in the alternative, given that an amended judgment establishes the relationship between judgment creditor and debtor, does an amendment or modification of the original judgment (including an amended judgment providing for additional relief) start the time period anew?

___a. The Ninth Circuit’s prediction of Hawaii law on this “novel” issue, ___a, was a critical underpinning to its ruling now under review by this Court. The two decisions of the Hawaii Supreme Court relied upon by the Ninth Circuit⁶ did not involve appealed judgments. Clearly, the Hawaii Supreme Court would not have agreed to decide the issue if earlier decisions of that court had addressed it or if that Court thought there was no merit to the issue. Since the law in other states is that an appealed judgment is not “rendered” until all appeals are final, that Court

⁶ *Brooks v. Minn*, 836 P.2d 1081 (Haw. 1992) and *International Savings & Loan Ass’n v. Wiig*, 921 P.2d 117 (Haw. 1996), relied upon by the Ninth Circuit, are inapposite to the issue of when an appealed judgment is “rendered” under Haw. Rev. Stat. § 657-5. A recent decision of the Hawaii intermediate appeals court in *Beecher Ltd. v. Alvarez & Marsal North America, LLC*, 187 P.3d 593 (Haw. App. 2008), Table, Text in WESTLAW, at *4, suggests that the an appealed judgment is “rendered” under Haw. Rev. Stat. § 657-5 after all appeals are final.

may well reject the Ninth Circuit's prediction of Hawaii law. *See e.g. Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399, 406 (5th Cir. 2001).

Deferral of action on this petition until the Hawaii Supreme Court rules could avoid a grave injustice to the Class. A positive ruling from the Hawaii Supreme Court after a denial of certiorari would leave the Class remediless. This Court regularly defers decision on certiorari petitions while awaiting the position of the federal or state government on issues. [cite] This Court has commented favorably on the advantage of obtaining an answer to a certified question about the interpretation of a state statute from the Hawaii Supreme Court. In *Burdick v. Takushi*, 504 U.S. 428 (1992) Justice O'Connor stated: "'Speculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication is particularly gratuitous when ... the state courts stand willing to address questions of state law on certification from a federal court. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 510 (1985) (O'Connor, J., concurring)(quoted in *Arizonians for Official English v. Arizona*, 520 U.S. 217 (1990))."

"Notwithstanding our authority to decide issues of state law underlying federal claims, we have used the certification device to afford state high courts an opportunity to inform us on matters of their own State's law because such restraint 'helps build a cooperative judicial federalism.'" *Bush v. Gore*, 531 U.S. 98, 547-48 (2000) (Ginsburg, J., dissenting)(quoting *Lehman Brothers v. Schein*, 416 U.S. 386, 391 (1974)).

The certified question has been fully briefed in the Hawaii Supreme Court and *amici* briefs have been tendered by the Class and Revelstoke. Since a decision is expected imminently, this Court should defer decision on the Petition until the Hawaii Supreme Court issues its ruling.

II. The Ninth Circuit Committed a Fundamental Error of law in Assuming the District Court's February 3, 1995 Order was the Final Judgment for the Class and Premising Intervention on that Error

Revelstoke's intervention in the court below was premised on the possible impairment of its interest by an extension of the Hawaii judgment. But the Class' judgment, which had been registered in Texas in April 2005, was the only impairment of Revelstoke's property interests. The Class' motion to extend its judgment in Hawaii would not affect the status of the Class' judgment registered in Texas because, once registered in Texas, that judgment stood on its own. As the Ninth Circuit in *Revelstoke* readily acknowledged the judgment registered in Texas, "is the functional equivalent of obtaining a new judgment in the registration court." Therefore, the critical issue under Texas law was whether the Class' judgment in Texas was registered in Texas within 10 years of the Hawaii Rule 58 final judgment. *See* Tex. Civ. Prac. & Rem. Code § 16.066(a)(foreign judgment must be registered within 10 years). If registration occurred within ten years, then intervention under FRCP 24 was improper and the entire decision of the Ninth Circuit must be vacated. Revelstoke lacked "a significant protectable property interest" in the Hawaii judgment within the meaning of Rule 24 because its property rights were solely impacted by the Texas judgment, not the Hawaii judgment.

The Class registered its judgment in the Northern District of Texas on April 4, 2005 pursuant to 28 U.S.C. § 1963, well within ten years of the December 6, 1995 "Judgment" entered by the Clerk of Court in Hawaii. This registration, Under Texas law, the filing of the judgment immediately rendered it a judgment of the Texas court. *Andrews v. Roadway Express Inc.*, 473 F.3d 565 (5th Cir. 2006).

No final judgment was entered for the Class until December 6, 1995 when the clerk of the Hawaii federal court signed and entered judgment in the consolidated case.⁷ The Ninth Circuit's error in assuming the district court's order of February 3, 1995, denominated the "Final Judgment," derives from its title. But there could be no final judgment until judgments were also entered in the other cases consolidated for trial with the Class case.⁸ That occurred after other orders, also denominated "Judgments," were entered and the district court directed the clerk to enter judgment. The pertinent docket entries are conclusive on this issue:

1995	Entry	Signatory
Jan. 18	"Verdict – Class Action – Cv. Nos. 86-0390-R & 86-033-R ..."	
Jan. 20	"Special Verdict – Cv Nos. 90-670-R, 90-671-R, 87-138-R, 86-225-R ..."	
Feb. 3	"Final Judgment – on behalf of Plaintiffs" [for the Class]	Real
Mar. 14	"Final Judgment – Final Judgment is entered in favor of 21 direct action pltf's ..."	Real
Aug. 11	"Final Judgment – Nos. Cv 86-0225 and Cv 87-0138 – Final Judgment entered pursuant to FRCP 58 in favor of plaintiffs Jaime Piopongco and Estate of Francisco Sison ..."	Real
Nov. 30	"Opinion [Relates to All Actions] ... Judgment should be entered for Plaintiffs ..."	Real

⁷ The cases -- class actions and individual actions -- were consolidated both for pretrial proceedings and for trial on the merits before the same jury in the multidistrict action known as *Ferdinand E. Marcos Human Rights Litigation*, MDL No. 840. See *Hilao v. Estate of Marcos*, *supra.*, 103 F.3d 767, 771 (9th Cir. 1996).

⁸ The Judicial Panel on MultiDistrict Litigation consolidated five cases against the Marcos Estate by Order dated June 5, 1990. The cases were consolidated for trial by the trial judge, and the verdict for punitive damages was common to all the cases. See *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 25 F.2d 1467, 1469 (9th Cir. 1994); Steinhardt, "Fulfilling The Promise Of Filartiga: Litigating Human Rights Claims Against The Estate Of Ferdinand Marcos," 20 Yale J. Int'l L. 65, 92 (Winter 1995).

Dec. 6	“Judgment – entered pursuant to the “Opinion and Order,” filed on November 30, 1995 (cc: all parties) [Relates to All Actions]”	Chinn/Nakamura ⁹
Dec. 13	Order – severing claims of Buncio, Socco and Fabic	Real
Dec. 13	Final Judgment – [Re: Cv 90-670-R and Cv 90-671-R] in favor of Buncio, Socco and Fabic ¹⁰	Real
1996		
Jan. 8	“Final Judgment – in favor of these 16 action plaintiffs...”	Real

Whatever confusion that existed in the early part of 1995 as to whether a final judgment pursuant to Rule 58 had been entered, was dispelled by the clerk’s entry of judgment on December 6, 1995. The Ninth Circuit never considered whether the February 3, 1995 order was a final judgment pursuant to Rule 58. However, the district court has ruled that final judgment in MDL 840 was not entered until December 6, 2008, and that ruling is definitive and unappealed. The district court stated “[a] final judgment as to all consolidated actions in MDL 840 pursuant to FRCP 58 was entered by the Clerk of the Court on December 6, 1995.” __a.

In *United States v. Indrelunas*, 411 U.S. 216 (1973) this Court held that Rule 58 means what it says: “every judgment shall be set forth on a separate document” signed and entered by the clerk. *Id.* at 222. The purpose of Rule 58 in its then-newly-amended form was to make the date of entry of judgment mechanical to avoid “uncertainties” and “spawn[] protracted litigation.” *Id.* Furthermore, Rule 58 explicitly conditions entry of final judgment on compliance with Rule 54(b) which provides in pertinent part:

⁹ Mr. Chinn was the Clerk of the United States District Court for the District of Hawaii and Mr. Nakamura was the chief docketing clerk in the Clerk’s Office.

¹⁰ Although titled “Final Judgment,” the orders of Dec. 13 and Jan. 8 are amended judgments since the March 14 order for 21 plaintiffs included Buncio, Socco, Fabic and the “16 action plaintiffs.”

... any order ... that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties *does not end the action as to any of the claims or parties* and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties rights and liabilities.

(emphasis added). Rule 54(b) further provides that:

... the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties *only if the court expressly determines that there is no just reason for delay.*

In the Hawaii federal litigation there was no motion for a Rule 54(b) determination and no such express determination by the court. In the Ninth Circuit, compliance with Rule 54(b) is a *sine qua non* for entry of final judgment under Rule 58. *Huene v. United States*, 743 F.2d 703, 705 (9th Cir. 1984)(“where an order disposes of only one of two or more cases consolidated at the district court level, the order is not appealable under 28 U.S.C. § 1291 absent a Rule 54(b) certification”). The Supreme Court of Hawaii specifically adopted the rule in *Huene*. *Leslie v. Estate of Tavares*, 109 Hawai'i 8, 13, 122 P.3d 803, 808 (Hawai'i, 2005). In *Reiter v. Cooper*, 507 U.S. 258, 270 (1993) this Court vacated a judgment because the lower court failed to make the “express determination” required by Rule 54(b) for entry of judgment. Therefore, consistent with Rules 54(b) and 58, the separate document titled “Judgment” signed, filed and entered by the Clerk on December 6, 1995 is the operative document finalizing the jury verdict in favor of the Class as well as finalizing the jury verdicts as to all other parties and claims.

III. A Federal Judgment on a Federal Cause of Action Cannot Be Rendered Unenforceable by State Law

Principles of federalism preclude a state from preventing enforcement of a federal judgment on a federal cause of action. Here the judgment was for massive *jus cogens* human rights abuses. The United States has committed itself to providing a remedy for victims of human rights abuses. *See Convention Against Torture and Other Cruel, Inhuman or Degrading*

Treatment or Punishment, art. 14. The remedy under the Alien Tort Statute, 28 U.S.C. § 1350 and the Torture Victims Protection Act is self-enforcing. Congress has never placed limits on how long a federal judgment on a federal cause of action may be enforced. Application of state law to prevent enforcement of a federal judgment for human rights violations would eviscerate the private enforcement of compensation for human rights violations.

Rule 69(a) of the Federal Rules of Civil Procedure only mandates application of state enforcement procedures where not in conflict with federal law. A state sunseting law such as H.R.S. § 657-5 is in direct conflict with Rule 82 which provides “[t]hese rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.”

This Court has held that state law may not be used to deny parties benefits accorded by federal law. In *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173, 175 (1942) this Court stated:

It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. When a federal statute condemns an act as unlawful the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield.

In accord: Cinnamon v. Abner A. Wolf, Inc., 215 F. Supp 833 (E.D. Mich. 1963)(state abatement law will not be applied in a federal antitrust action where the plaintiff died since to do so would thwart federal policy).

Even assuming that a state law can render a federal judgment unenforceable, federal law determines when a federal judgment on a federal cause of action is “rendered.” Many decades ago, this Court affirmed the obvious point that “[i]t cannot be that the statute of limitations will

be allowed to commence to run against a right until that right has accrued in a shape to be effectually enforced.” *Borer v. Chapman*, 119 U.S. 587, 602 (1887). In *Borer* this Court stated that until final judgment was “actually entered” after appeal, “the right of the complainant ... to enforce that judgment” “was in abeyance” because “the litigation had, until then ended, been continuously in progress.” *Id.* This Court has endorsed the principle set forth in the *Borer* decision in other cases. For example, in *United States v. Wurts*, 303 U.S. 414, 418 n. 10 (1938), this Court cited *Borer* for the proposition that a statute of limitations does not begin to run until a judgment is in a position to be enforced. The view that a sunset law does not begin until the appeal process has been completed, or the time for filing an appeal has passed, is supported by numerous decisions. Two of the recent opinions discussing this issue most directly are *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399 (5th Cir. 2001) and *Andrews v. Roadway Express Inc.*, 473 F.3d 565 (5th Cir. 2006).

The doctrine of finality of judgments is well understood under federal law. Finality requires that all appeals be completed or the time for appeal has run. Litigants and practitioners understand this. It would be illogical and unfair to litigants to have “the clock start running” on judgments at one time for some purposes, such as appeal, and at another time for other purposes, such as sunset. The federal interest in having federal judgments construed uniformly is paramount. When a federal judgment is “final” and “rendered” is quintessentially a matter of federal law, not state law. The benefit of a uniform start date for when a federal judgment is “rendered” and “final” lies in congruency and consistency. The federal interest outweighs any interest states may have. Consistency would also promote fairness and remove a minefield for the unwary. Appeals to successive courts can take years before there is finality. A recent appeal involving the Class’s judgment on a collection matter took more than four years. *Republic of the*

Philippines v. Pimentel, 128 S.Ct. 2180 (2008). Other appeals have taken longer. [cite] It would be a cruel aberration that an unappealed federal judgment would have a longer enforcement period than one contested on appeal for years.

CONCLUSION

For all the foregoing reasons Petitioners respectfully urge this Court (1) to defer consideration of this Petition until the Hawaii Supreme Court has ruled on the certified question of state law central to this appeal, and (2) grant certiorari to review the issues presented.

Respectfully submitted,

ROBERT A. SWIFT
Counsel of Record
Kohn, Swift & Graf, P.C.
One South Broad Street
Suite 2100
Philadelphia, PA 19107
(215) 238-1700

APPENDIX A

UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT

In re ESTATE OF FERDINAND E.
MARCOS HUMAN RIGHTS
LITIGATION,

Celsa Hilao,

Plaintiff-Appellee,

v.

Estate of Ferdinand Marcos,

Defendant-Appellee,

Revelstoke Investment Corporation, Inc.,

Applicant for Intervention

and Appellant.

No. 06-16301

D.C. No.

MDL-00840-MLR

OPINION

Appeal from the United States District Court
for the District of Hawaii
Manuel L. Real, District Judge, Presiding

Argued and Submitted
June 17, 2008 – Honolulu, Hawaii

Filed July 31, 2008

Before: Alfred T. Goodwin, Pamela Ann Rymer, and
Sandra S. Ikuta, Circuit Judges

Opinion by Judge Rymer:

OPINION

RYMER, Circuit Judge

This appeal requires us to consider a novel situation involving the registration of a federal judgment. In short, the judgment was rendered in the United States District Court for the District of Hawaii and registered in the United States District Court for the Northern District of Texas, where the prevailing plaintiff sought to enforce it

against a non-party, Texas defendant. The defendant in the Texas enforcement action moved to dismiss on the ground that the judgment was not timely registered because, under Texas's borrowing statute, the Hawai'i "statute of limitations" for enforcing judgments applies and under it, the judgment had expired. This prompted the plaintiff to ask the rendering court to declare that the judgment was live and, in any event, to extend it, which the district court did. Meanwhile, the collection defendant moved to intervene in the extension proceeding, which the district court did not allow, and then to appeal the extension, which the court also did not allow. We conclude that the party against whom enforcement was sought had a significant protectable interest at stake that gave it the right to be heard in the extension proceeding, and to appeal. Having considered the intervenor's arguments on the merits, we also conclude that the district court erred in purporting to extend the judgment. Accordingly, we reverse the orders denying intervention, and vacate the order granting extension.

I

In March, 1986, a class of human rights victims whose lead plaintiff was Celsa Hilao brought suit in the District of Hawaii against Ferdinand E. Marcos and his estate. This action became part of a multidistrict proceeding, *Estate of Ferdinand E. Marcos Human Rights Litigation*, MDL 840, over which the transferee judge, Honorable Manuel L. Real, presided. A judgment was entered in Hilao's favor on February 3, 1995 (the MDL 840 Judgment). In it, the court retained jurisdiction. The MDL 840 Judgment was appealed and affirmed, *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir.1996); our mandate issued January 8, 1997. Before commencing the proceedings at issue here, Hilao registered the MDL 840 Judgment in the Northern District of Illinois in January 1997, the Republic of the Philippines in May 1997, and Singapore in February 2005. Hilao then registered the MDL 840 Judgment in the Northern District of Texas pursuant to 28 U.S.C. § 1963,¹ and filed a class action complaint April 8, 2005 against

¹ Section 1963 provides in pertinent part:

A judgment in an action for the recovery of money or property entered in any ... district court ... may be registered by filing a certified copy of the judgment in any other district ... when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown.... A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

Revelstoke Investment Corporation, Inc., and six other corporations (collectively, "Revelstoke"), alleging that real properties to which Revelstoke holds title in Texas are beneficially owned by the Marcos Estate, and seeking to execute and foreclose on those properties in partial satisfaction of the MDL 840 Judgment.

On May 9, 2006, Revelstoke notified Hilao of its belief that the MDL 840 Judgment had expired pursuant to Hawai'i Revised Statute § 657-5² as applied through the Texas statute of limitations, Texas Civil Practice & Remedies Code § 16.066(a), which is a borrowing statute.³ HRS § 657-5 provides that a judgment is presumed paid and discharged ten years after it is rendered, unless the judgment is extended within that ten-year period.

On June 5, Hilao filed a motion pursuant to Federal Rules of Civil Procedure 69 in the MDL 840 action for a ten-year extension of the judgment. Hilao's memorandum in support explains that the issue had been raised in the Texas collection litigation and that, while Hilao believed HRS § 657-5 was not applicable to her federal judgment, she sought an extension out of an abundance of caution.

Revelstoke filed a motion for judgment on the pleadings in the Texas litigation on June 15, contending that the enforcement *984 action was barred by the Hawai'i ten-year statute of limitations borrowed in the forum state by Tex. Civ. Prac. & Rem.Code § 16.066(a). On June 19, Hilao asked the Northern District of Texas to

² HRS § 657-5 provides:

Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree.

³ Tex. Civ. Prac. & Rem.Code § 16.066(a) provides: "[a]n action on a foreign judgment is barred in this state if the action is barred under the laws of the jurisdiction where rendered."

stay proceedings on Revelstoke's motion until after the District of Hawaii ruled on Hilao's request to extend the judgment. A stay was subsequently entered.

On June 22, Revelstoke moved to intervene in MDL 840 for the limited purpose of contesting Hilao's motion to extend. Hilao did not oppose intervention.

At a hearing held on June 26, Judge Real first granted Hilao's motion to extend the judgment. After ruling on that motion, the court considered, and denied, Revelstoke's request to intervene for the purpose of opposing the motion. Its reasons, stated from the bench, were that the court had no jurisdiction over the matters in Texas; that the Texas litigation had not been sent to the District of Hawaii under the multidistrict case; and that nothing that happens in the District of Hawaii can affect the judgment in Texas.

The same day the court signed a written order, in the form proposed by Hilao, granting the extension. The order was entered June 27, and finds that the MDL 840 Judgment was not final until issuance of the Ninth Circuit mandate on January 8, 1997; HRS § 657-5 only applies to "domestic" judgments and federal court judgments have no expiration date; application of HRS § 657-5 to federal court judgments on federal causes of action would be barred by the Supremacy Clause; and alternatively, even if HRS § 657-5 were applicable, good cause exists to grant an extension to January 8, 2007 given Marcos's pattern and practice of secreting assets.

Revelstoke then moved to intervene for the limited purpose of appealing the district court's extension order. The court denied this motion in a written order that states: "This matter rests in the jurisdiction of the Texas litigation."

Revelstoke filed a timely notice of appeal from the district court's orders denying intervention and granting the extension.

II

Intervention is governed by Fed. R. Civ. Proc. 24(a) and (b). To intervene as of right pursuant to Rule 24(a), an applicant must show that "(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest." *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 802 (9th Cir.2002) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir.2002))

(quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir.1998) (internal quotation marks omitted))).

Only the first requirement is seriously disputed. For this requirement, we set out an “analytical framework” in *City of Los Angeles*, 288 F.3d at 398. As summarized in *Southern California Edison*:

An applicant has a “significant protectable interest” in an action if (1) it asserts an interest that is protected under some law, and (2) there is a “relationship” between its legally protected interest and the plaintiff’s claims. The relationship requirement is met if the resolution of the plaintiff’s claims actually will affect the applicant. The “interest” test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be established. Instead, the *985 “interest” test directs courts to make a practical, threshold inquiry, and is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

307 F.3d at 803 (internal quotation marks and citations omitted.)

Revelstoke argues that it has an interest-avoiding the loss of its real property in the Texas action-that is protected under HRS § 657-5, which shields persons such as Revelstoke from efforts to enforce judgments that have expired. Further, in Revelstoke’s view, the relational element is met because its motion in the Northern District of Texas seeks to vindicate this interest, while Hilao’s motion for an extension in the District of Hawaii seeks to thwart it. Hilao counters that Revelstoke’s interest is solely concerned with property in Texas that is the subject of a separate lawsuit unrelated to the subject matter of MDL 840-the torture, summary execution and disappearance of thousands of Filipinos at the hands of Ferdinand Marcos.

We review de novo the district court’s denial of intervention as of right, *Southern California Edison*, 307 F.3d at 802, and are guided by the maxim that the requirements for intervention are broadly interpreted in favor of intervention. *See, e.g., City of Los Angeles*, 288 F.3d at 397.

We conclude that Revelstoke had the right to intervene on the record adduced. Hilao interposed no objection to intervention, which implicitly conceded the significance of a protectable interest related to

her motion to extend.⁴ The district court ruled without reference to Rule 24(a) or the factors that frame the “significant interest” analysis. Of the reasons given—no jurisdiction over the matters in Texas, the Texas litigation had not been sent to the District of Hawaii, and nothing that happens in the District of Hawaii can affect the MDL 840 Judgment in Texas—the first two have no relevance to intervention and the third cannot be right. Whether the MDL 840 Judgment is alive or dead is directly at issue in the Texas litigation. As Hilao acknowledges, it was this question that precipitated her request in MDL 840 for an extension, and, in turn, a request in the enforcement action for a stay. Her papers in the Northern District of Texas point out that a decision on this issue by the District of Hawaii will effectively pretermitt the outcome of Revelstoke's motion to dismiss. In these circumstances, we are satisfied that Revelstoke has a significant interest that is protected by Hawai'i law, and that is actually affected as a practical matter by the resolution of Hilao's request for relief.

We are not persuaded otherwise by Hilao's position on appeal. She puts a good deal of weight on *United States v. Alisal Water Corp.*, 370 F.3d 915 (9th Cir.2004), where a judgment creditor tried to intervene in an environmental enforcement action in which he had no interest except for the prospect that an award of penalties in the remedial phase might impair his ability *986 to collect the debt. We thought this too remote from the core issues involved in the litigation, and in any event, believed the creditor's interest would not be impaired because a separate process for approving claims was in place. However, the Alisal scenario is quite different from the situation here. No doubt Revelstoke's interest (like the Alisal creditor's interest) would have been too distant for intervention before Hilao invoked the District of Hawaii's jurisdiction over the MDL 840 Judgment in response to Revelstoke's position in the Northern District of Texas; but once Hilao sought relief with respect to the life of the judgment in MDL 840, and a stay with respect to the same issue in the Northern District of Texas

⁴ So, too, does her request for a stay in the collection action. Hilao's memorandum in support of a stay in the Northern District of Texas states: “Instead of placing this Court in conflict with its brother court in Hawaii, Defendants should, if they believe their own arguments, move to intervene in the action in Hawaii. Since it is a Hawaiian state statute at issue, presumably the Hawaiian Federal Court has more experience in interpreting and applying it than a Texas court. In any event, there is no harm to the parties by staying the instant Motion until after the Federal Court in Hawaii addresses the issue on June 26. Depending on the decision by the Federal Court in Hawaii, Defendants may wish to pursue, modify or withdraw their Motion.”

where it initially surfaced, Revelstoke's conjectural interest became concrete.

By the same token, we see no compelling reason why Revelstoke cannot have a sufficient interest in the life of the judgment to intervene in a discrete proceeding as to that particular issue, even though it lacks an interest in the litigation as a whole. Alisal recognized this precise possibility. 370 F.3d at 921-22 (observing that prior cases suggest that a party's interest in a specific phase of a proceeding may support intervention at that particular stage of the lawsuit); *see also City of Los Angeles*, 288 F.3d at 398-99 (noting that an intervenor's protectable interest might shift if the scope of the litigation is restructured). Revelstoke's interest in participating in an MDL 840 proceeding did not arise until Hilao's motion to extend effectively transferred the forum for determining the life of the MDL 840 Judgment from the Northern District of Texas to the District of Hawaii. Absent that preemptive strike, the issue was before the Northern District of Texas for decision. The registering court could have resolved the issue itself-in which event Revelstoke would have had a place at the table-or elected to defer to the District of Hawaii by staying its hand until the parties had it out before the court that had rendered the judgment-in which case Revelstoke would also have had a say. It follows that if Revelstoke's interest in having a judgment lien removed from its property enables it to contest enforceability of the judgment in the collection action itself, Revelstoke is entitled to do so wherever that issue turns out to be joined. As it turned out here, this was in MDL 840.

Finally, Hilao suggests that Revelstoke's interest is not entirely impaired or impeded because the district court's extension order has no direct effect on the eventual ruling of the Northern District of Texas. While this is so with respect to the merits of the enforcement action, her own papers suggest the opposite with respect to the threshold issue of whether the MDL 840 Judgment was alive at the time of registration. Of course we cannot say for sure what the Northern District of Texas will do once its stay is lifted, but Hilao's representation to that court manifests her belief that the registering court will defer to the rendering court on the issue of extending its own judgment. Hilao relies on cases where courts have rejected intervention founded on concerns about the stare decisis or collateral estoppel effect of a decision, such as *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 531-532 (7th Cir.1988), and *Purcell v. BankAtlantic Financial Corp.*, 85 F.3d 1508, 1513 (11th Cir.1996). But there is an important difference between a non-party's interest in avoiding bad precedent or obtaining a favorable opinion (the situation in *Bethune*)-or in influencing the outcome of another proceeding in which one has only a collateral interest (the situation in *Purcell*)-and the interest that a real party in interest has in adjudicating an issue it has raised in one proceeding that lands in another

proceeding*987 for disposition. In the former case, the non-party's interest is abstract and indirect; in the latter case, the party's interest is particularized and direct.

Consequently, we conclude that Revelstoke asserts an interest in not having its property executed upon pursuant to a judgment that has expired; this interest is significant, and protected by law (HRS § 657-5 as applied through the Texas statute of limitations, Tex. Civ. Prac. & Rem.Code § 16.066(a)); and there is a direct relationship between its legally protected interest and Hilao's claim in the ancillary proceeding that the MDL 840 Judgment has not expired. This means that Revelstoke had a right to intervene and be heard on the merits.⁵ We could remand, but see no point in doing so. Revelstoke seeks to protect its own interests, the merits are fully briefed, and no other party in MDL 840 has any interest in the controversy between Hilao and Revelstoke. Therefore, we turn to the order extending the MDL 840 judgment.

III

Revelstoke argues that HRS § 657-5 means what it says: a judgment expires within ten years unless extended before expiration; that the Hawaii Supreme Court said so in *International Savings & Loan Ass'n v. Wiig*, 82 Hawai'i 197, 921 P.2d 117 (1996); and that the district court clearly erred in resurrecting the MDL 840 Judgment in 2006 after it expired in February 2005. We agree. On its face, HRS § 657-5 plainly states that all judgments are extinguished after ten years unless timely renewed. The Hawai'i Supreme Court has authoritatively declared that the burden is on the judgment creditor to seek judicial extension of the judgment prior to expiration of the ten-year period, and that if she fails to secure an extension within the ten years, "the judgment and all the rights and remedies appurtenant to that judgment terminate." *Wiig*, 921 P.2d at 119.

Hilao does not argue to the contrary. Instead, she defends the order on other grounds, namely, the MDL 840 Judgment did not expire until January 8, 2007 when the Ninth Circuit's mandate issued; the MDL 840 Judgment was renewed, and thus extended, every time it was registered in another court; partial collection tolled or renewed the judgment; the MDL 840 Judgment is not governed by an Hawai'i statute; state statutes that would impede the ability of federal courts to ensure collectability of federal judgments based on federal causes of action cannot be enforced because of the Supremacy Clause; the

⁵ Given this conclusion, we need not consider whether the district court also erred in denying permissive intervention under Rule 24(b).

judgment would not have lapsed in any event as it was not “rendered” until January 8, 1997; and good cause existed for extending the MDL 840 Judgment. In effect, Hilao's position is that a federal judgment is free of state limitations and can be enforced forever. For this she cites no authority, and nothing she argues persuades us to accept her view.

Section 1963, the federal statute under which Hilao registered the MDL 840 Judgment in the Northern District of Texas for supplemental enforcement proceedings, has no limitations period. However, it does provide that a registered judgment “shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.” Rule 69(a) is to the same effect, providing that the procedure⁶ on execution is to be in accordance with the procedure of the state in which the district court is located at the time the remedy is sought. Likewise, the *Rules of Decision Act*, 28 U.S.C. § 1652, requires application of state statutes of limitations unless a timeliness rule drawn from elsewhere in federal law should be applied. *See Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 147, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987) (so holding). This is the understanding upon which we, and other courts, have proceeded in similar circumstances, looking to the law of the registration forum for its statute of limitations on enforcement of judgments. *See, e.g., Duchek v. Jacobi*, 646 F.2d 415, 417 (9th Cir.1981) (acknowledging rule that state law applies to procedures for enforcing a judgment); *Marx v. Go Publ'g Co.*, 721 F.2d 1272, 1273 (9th Cir.1983) (applying limitations law of the registering state); *Matanuska Valley Lines, Inc. v. Molitor*, 365 F.2d 358, 359-60 (9th Cir.1966) (same).⁶

Marx and *Matanuska* are particularly instructive. In *Marx*, the plaintiff obtained a judgment against Go Publishing in the United States District Court for the District of Columbia which he registered, and sought to enforce, in the Central District of California. Go Publishing raised a statute of limitations defense based on the California period for enforcing judgments (ten years). We held, based on analogous California law, that the ten-year period runs from the time the judgment is registered, so long as the judgment is not time-barred at the time of registration. In so holding, we rejected an argument that state limitations rules are inapplicable where a district court judgment is registered under § 1963. 721 F.2d at 1273. In *Matanuska*, the plaintiff obtained a judgment in the United States District Court for the District

⁶ See also, e.g., *Stanford v. Utley*, 341 F.2d 265, 266 (8th Cir.1965) (looking to forum law for the limitations period on enforcement of judgments); *Home Port Rentals, Inc. v. Int'l Yachting Group*, 252 F.3d 399, 406 (5th Cir.2001) (same).

of Alaska on July 26, 1956 and registered it pursuant to § 1963 in the Western District of Washington on September 10, 1964. Registration of the judgment was timely under the laws of Alaska, the rendering state, where the life of a judgment is ten years. However, under the laws of Washington, the registering state, a foreign judgment was not enforceable or registrable after the expiration of six years following its entry. We held that enforcement of the registered judgment was barred by the Washington statute of limitations. 365 F.2d at 360.

Relying on *Duchek*, Hilao posits that state law cannot divest a federal district court of jurisdiction to enforce its judgment. However, *Duchek* is inapposite. The *Ducheks* had obtained a judgment in the Central District of California, sued to set aside an allegedly fraudulent transfer of assets, and obtained another judgment that they sought to enforce. The defendants argued that because state law applied under Rule 69(a), the court lacked jurisdiction in light of a state venue statute that required a petition to enforce a judgment to be filed in the state superior court. We held that state legislation cannot withdraw federal jurisdiction. But this is neither the purpose, nor the effect, of applying the forum's statute of limitations for enforcing a judgment. It does not follow from the principle that state law cannot oust a federal court of subject matter jurisdiction, that no state law cutting off or curtailing a right-here, to enforce a judgment-may ever apply.

Stating the same thing somewhat differently, Hilao proposes that a federal judgment is renewed, and thereby *989 extended, every time it is registered under § 1963 in another court. We agree with part of what she says: registering a judgment under § 1963 is the functional equivalent of obtaining a new judgment of the registration court. See, e.g., *Matanuska*, 365 F.2d at 360; *Marx*, 721 F.2d at 1273. The effect is to allow that judgment, i.e., the newly registered judgment, to be enforced for the period allowed by the law of that forum, i.e., the state of registration, if the judgment were live, and thus registerable, at the time when it was registered. However, Hilao points to no authority suggesting that registration in one district-even if accomplished when the judgment was live-"extends" the statute of limitations in all districts.

Hilao maintains that the clock starts running on federal judgments after the time for appeal has expired. While this is true for many purposes such as finality of judgments, see, e.g., *Calderon v. United States District Court*, 128 F.3d 1283, 1286 n. 2 (9th Cir.1997), overruled on other grounds by 163 F.3d 530 (9th Cir.1998), abrogated on other grounds by *Woodford v. Garceau*, 538 U.S. 202, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003), the question here is the judgment's longevity. HRS § 657-5 provides that the limitations period begins to run on "the date the original judgment or decree was rendered." It does

not say ten years from the date of entry plus however much time it takes to appeal.⁷ Consistent with Hawai'i's policy that judgment creditors have ten years to attempt to collect from the date the judgment is rendered, enforcement of the MDL 840 Judgment began immediately.

Neither *Borer v. Chapman*, 119 U.S. 587, 7 S.Ct. 342, 30 L.Ed. 532 (1887), nor *Home Port*, upon which Hilao rely, requires a different result. In *Borer*, the Court was concerned with a judgment entered nunc pro tunc whose terms were changed from the original judgment, and concluded that the statute of limitations did not begin to run until the judgment was in a form to be enforced. 119 U.S. at 602, 7 S.Ct. 342. *Home Port* noted that if a judgment is properly registered in one state, it may be enforced within the limitation period of that state even though the time for enforcement has run in the rendering state. In this context, the court characterized as “clearly specious” a contention that the rendering state's limitations period (which the defendant counted from the date of entry) applied. 252 F.3d at 406. While the statement can be read as critical of both contentions, i.e., that the rendering state's statute of limitations applied (there is no suggestion in *Home Port* that the registering state borrowed the rendering state's statute) and that the rendering state started counting from entry instead of after appeal, the court does not purport to adopt a rule that would be pertinent here.

Hilao contends, and the district court's order states, that HRS § 657-5 applies only to “domestic” judgments rendered by Hawai'i state courts. However, when a federal court borrows the most analogous state statute of limitations as a matter of federal law, the loan cannot turn on what the “most analogous” state statute says about its own applicability. *See, e.g., Home Port Rentals*, 252 F.3d at 403 n. 5 (holding that a Louisiana statute of limitations which referred only to a “ ‘money judgment rendered by a trial court of this State’ ” applied to judgments rendered by a federal district court in Louisiana); *990 *Stanford*, 341 F.2d at 266 & n. 2 (concluding that a Mississippi statute of limitations which referred to “ ‘[a]ll actions founded on any judgment or decree rendered by any court of record in this state’ ” applied to a judgment rendered by a federal court in Mississippi).

Alternatively, Hilao submits that the running of the Hawai'i period of limitations was tolled by her collection efforts, and that in any event, good cause existed to extend the judgment for ten years because

⁷ HRS § 657-5 caps the life of a judgment (properly extended) at twenty years, running from the same point: “A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree.”

Marcos had a pattern and practice of fraudulently secreting his assets. Whether or not this is so, the extension was not sought before the MDL 840 Judgment expired. HRS § 657-5 contains no provision for revival, and the Hawai'i Supreme Court has held that its time limits are absolute. *Wiig*, 921 P.2d at 120 (ruling that the existence of other enforcement actions does not toll the time limits mandated by HRS § 657-5).

We conclude that the district court erred in extending the judgment pursuant to a request that was not made within ten years after the original judgment was rendered. None of the proffered reasons for bypassing this rule of Hawai'i law is convincing. Accordingly, having reversed the orders denying intervention as of right, and to appeal, and having considered the merits of the relief Hilao sought and obtained in the District of Hawaii, we vacate the court's order of June 27, 2006.

REVERSED IN PART; VACATED IN PART.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

IN RE:

ESTATE OF FERDINAND E. MARCOS
HUMAN RIGHTS LITIGATION

}
} MDL NO. 840
} No. 86-390
} No. 86-330
}

THIS DOCUMENT RELATES TO:

Hilao et al v. Estate of Ferdinand
E. Marcos,
and
DeVera et al v. Estate of Ferdinand
E. Marcos.

}
} ORDER
}
}
}
}

ORDER

The Court has carefully reviewed the Class Plaintiffs' Motion for Extension of Judgment and the record in this case. The Court finds as follows:

1. The Judgment rendered in the above action on February 3, 1995 was not final until issuance of the mandate of the Ninth Circuit was spread on the record of this Court on January 8, 1997.

2. Hawaii Revised State 657-5 provides in "[u]nless an extension is granted, every judgment and decree of any court of the state shall be presumed paid and discharged at the expiration of ten years after the judgment or decree was rendered." The statute also provides that a court may extend the ten year period for an additional ten years.

3. HRS 657-5 only applies to “domestic” judgments, that is, judgments rendered by Hawaii state courts. The federal Judgment rendered in this action was based on a federal cause of action. Federal court judgments have no expiration date.

4. Application of HRS 657-5 to federal court judgments on federal causes of action would be barred by the Supremacy Clause of the United States Constitution. Congress created a statutory regime for entry of and transfer of federal court judgments which would be impeded by HRS 657-5.

5. In the alternative, if HRS 657-5 were applicable, there is good cause to grant an extension of the Judgment. The Judgment will not be ten years old until January 8, 2007. The Judgment is hereby extended for ten years from its tenth anniversary. This Court and the Ninth Circuit have held that Marcos had a pattern and practice to fraudulently secrete his assets and use off-shore corporations and cronies to hold title to property. Plaintiffs have exercised due diligence and exceptional efforts in attempting to identify assets to satisfy the judgment. This Court has held Imelda Marcos and Ferdinand R. Marcos in contempt for violating the terms of the permanent injunction by transferring assets. Marcos family members have failed to appear for deposition or produce documents regarding the identification and collection of assets to satisfy the Judgment.

6. The February 1999 Settlement Agreement is unaffected by this Order.

Dated: Honolulu, Hawaii, June _____, 2006

The Honorable Manuel Real

APPENDIX C

IN THE SUPREME COURT OF HAWAI'I

IN RE:	MDL NO. 840
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION	CERTIFIED QUESTION
MDL No. 840	
THIS DOCUMENT RELATES TO ALL ACTIONS	

The United States District Court for the District of Hawai'i sends its greetings to the Supreme Court of Hawai'i. In the above matter the District Court has determined that there is a question concerning the law of Hawai'i which is determinative of the cause and there is no clear controlling precedent in the Hawai'i judicial decisions. The question is:

With regard to the time period for executing a judgment in H.R.S. § 657-5, does the time period begin after the appellate process is completed (because the appeal may provide relief in the form of damages not provided for in the original judgment and because the completion of the appellate process allows the judgment creditor to proceed without limitation to collect the judgment), or, in the alternative, given that an amended judgment establishes the relationship between judgment creditor and debtor, does an amendment or modification of the original judgment (including an amended judgment providing for additional relief) start the time period anew?

Facts pertinent to this question are:

1. The Plaintiffs, the Estate of Francisco Sison and Jaime Piopongco, obtained individual judgments for damages against the Estate of Ferdinand E. Marcos on August 11, 1995 for human rights abuses. On that same day judgment was entered against Plaintiff Jose Maria Sison and in favor of the Estate of Ferdinand E. Marcos.

2. A final judgment as to all consolidated actions in MDL 840 pursuant to FRCP 58 was entered by the Clerk of the Court on December 6, 1995.

3. Plaintiffs Jose Maria Sison and Piopongco appealed their judgments and obtained a reversal which resulted in the entry of an amended final judgment in their favor on October 3, 1997. *Sison v. Estate of Marcos*, 1998 WL 789405 (9th Cir. 1998). The judgment was not entered *nunc pro tunc*.

4. On October 2, 2007 all three plaintiffs filed a motion to extend their judgments pursuant to Haw. Rev. Stat. 657-5.

5. Following hearing on September 12, 2008, the United States District Court decided to certify to the Hawai'i Supreme Court the above stated issue of Hawai'i law.

BY THE COURT:

MANUEL L. REAL
MDL 840 Transferee Judge

CERTIFIED AS A TRUE AND CORRECT
DOCUMENT OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF HAWAII

CLERK OF THE COURT

SEAL

APPENDIX D

NO. 29372

IN THE SUPREME COURT OF THE STATE OF HAWAII

ESTATE OF FRANCISCO SISSON, JOSE PMARIA SISON, and
JAIME PIOPONGCO, Plaintiffs-Appellants,

vs.

ESTATE OF FERDINAND E. MARCOS, Defendant-Appellee.

ORIGINAL PROCEEDING

ORDER ON CERTIFIED QUESTION

(By: Moon, C.J., Nakayama, and Duffy, JJ.,
Intermediate Court of appeals Judge Leonard, in place
of Levinson, J., recused, and Intermediate Court
of Appeals Judge Fujise, in place of Acoba, J., recused)

Upon consideration of the order of the United States District Court for the District of Hawai'i requesting the Supreme Court of the State of Hawai'i to answer the certified question, it appears that the question is amenable to answer by this court pursuant to Hawaii's Rules of Appellate Procedure (HRAP Rule 13.

Therefore,

IT IS HEREBY ORDERED, without conclusively determining whether this court will answer the question, that:

1. Pursuant to HRAP Rule 28(e), plaintiffs Estate of Francisco Sison, Jose Maria Sison, and Jaime Piopongco are designated the appellants for purposes of this proceeding and shall pay the required filing fee for an original proceeding in
2. Defendant Estate of Ferdinand E. Marcos is designated the appellee for this proceeding.

3. Pursuant to HRAP Rule 13(c), Plaintiffs-Appellants shall make all necessary arrangements with the clerk of the United States District Court for the District of Hawai'i to transmit the original or certified copies of the pending federal court case to this court. It shall be the responsibility of Plaintiffs-Appellants to ensure that the record is received in this court within thirty days from the date of this order.

4. After the record is filed in the supreme court, Plaintiff's-Appellants shall file an opening brief within the time provided by HRAP Rule 28(b). The opening brief shall conform to the format and content requirements of HRAP Rule 28, insofar as applicable. A statement of jurisdiction pursuant to HRAP Rule 12.1 is not necessary.

5. Thereafter, Defendant-Appellee shall file an answering brief within the time provided by HRAP Rule 28(c). The answering brief shall conform to the format and content requirements of HRAP Rule 28, insofar as applicable.

6. Plaintiffs-Appellants may file a reply brief in accordance with HRAP Rule 28(d).

DATED: Honolulu, Hawai'i, October 15, 2008.