

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Pina v. Pina

Case No. 25-CV-386 JLS (SBC) · No. 25-CV-386 JLS (SBC) · Decided August 1, 2025

SUMMARY

The United States District Court for the Southern District of California renewed its order requiring Plaintiff Marcelina Pina to show cause why federal subject-matter jurisdiction exists over her child-support-related claims. The court held that the cited criminal statutes do not create private rights of action, denied as moot Plaintiff’s motions for leave to amend, to quash service, and for an extension of time to serve, and ordered a jurisdictional response by September 12, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 1, 2025
DOCKET	25-CV-386 JLS (SBC)
DISPOSITION	other
PROCEDURAL POSTURE	The district court sua sponte examined whether it had subject matter jurisdiction over Plaintiff's action and ordered Plaintiff to show cause why jurisdiction exists. The court denied as moot Plaintiff's motions for leave to amend, to quash service, and for an extension of time to serve Defendant.
STANDARD OF REVIEW	The court independently reviewed subject matter jurisdiction sua sponte. Federal district courts are presumed to lack jurisdiction unless a constitutional or statutory basis affirmatively appears, and the action must be dismissed if the court determines at any time that subject matter jurisdiction is lacking.
PRECEDENTIAL VALUE	unpublished
PARTIES	Marcelina Pina v. Martine Pina

TOPICS

subject matter jurisdiction

civil procedure

statutory interpretation

motion to amend

service of process

PRACTICE AREAS

civil procedure

family law

federal jurisdiction

QUESTIONS PRESENTED

1. Whether Plaintiff's reliance on 18 U.S.C. § 228 establishes federal-question jurisdiction or creates a private right of action.
2. Whether the criminal tax provisions cited in Plaintiff's proposed amended complaint create a private right of action or support federal-question jurisdiction.
3. Whether Plaintiff's motions for leave to amend, to quash service, and for an extension of time to serve Defendant should be decided while subject matter jurisdiction remains unresolved.

HOLDINGS

1. Section 228 is a criminal statute that does not create a private right of action; therefore, Plaintiff's invocation of the statute does not establish federal-question jurisdiction.
2. The criminal provisions in 26 U.S.C. §§ 7201, 7206, and 7207 do not create private rights of action and therefore do not provide a basis for federal-question jurisdiction.
3. The court may defer consideration of the service-related issues and deny the motions to amend, quash service, and extend time to serve as moot while requiring Plaintiff to demonstrate that subject matter jurisdiction exists.

KEY QUOTATIONS

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." (at 1)

"The fact that a federal statute has been violated and some person harmed does not automatically give rise to a private right of action." (at 2)

"No such intent can be discerned when it comes to § 228." (at 3)

FACTUAL BACKGROUND

Plaintiff sought to collect unpaid child support and initially invoked 18 U.S.C. § 228, a federal criminal statute concerning failure to pay certain interstate child-support obligations. Plaintiff and Defendant both reside in California, eliminating complete diversity jurisdiction. Plaintiff's proposed amended complaint would assert claims involving concealment of income, tax fraud under 26 U.S.C. §§ 7201, 7206, and 7207, and interference with child-support enforcement.

PROCEDURAL HISTORY

Plaintiff filed a form complaint asserting a claim under 18 U.S.C. § 228 and paid the filing fee after in forma pauperis status was denied. The court previously denied appointment of counsel and issued an order to show cause concerning subject matter jurisdiction. Plaintiff conceded diversity jurisdiction was unavailable, argued that federal-question jurisdiction existed, and alternatively moved to amend the complaint; she also moved to quash service and extend the time for service. The court renewed the show-cause order, denied the motions as moot, and warned that failure to respond could result in dismissal for lack of jurisdiction and failure to prosecute.

DISPOSITION

other

CASES CITED

- Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1093 (9th Cir. 2004)
- Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)
- Cooper v. Tokyo Elec. Power Co., 990 F. Supp. 2d 1035, 1038 (S.D. Cal. 2013)
- A-Z Int'l v. Phillips, 323 F.3d 1141, 1145 (9th Cir. 2003)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, 578 U.S. 374, 383 (2016)
- Gunn v. Minton, 568 U.S. 251, 258 (2013)
- Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979)
- In re Digimarc Corp. Derivative Litig., 549 F.3d 1223, 1230 (9th Cir. 2008)
- Stupy v. U.S. Postal Serv., 951 F.2d 1079, 1081 (9th Cir. 1991)
- Alaji Salahuddin v. Alaji, 232 F.3d 305, 311-12 (2d Cir. 2000)
- McQueary v. Child Support Enf't, 812 F. App'x 911, 914-15 (11th Cir. 2020)
- Freeman v. Freeman, No. 5:24-CV-351-BO-KS, 2024 WL 5150671, at *2 (E.D.N.C. Nov. 7, 2024)
- Treadway v. Soc. Sec. Admin., 2021 WL 694927, at *2 (E.D. Mo. Feb. 23, 2021)
- Cammack v. Foschini, No. A-17-MC-557-SS, 2017 WL 7805750, at *1 (W.D. Tex. Aug. 31, 2017)
- Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 24 (1979)
- Lemke v. Jander, No. 20-CV-362 JLS (KSC), 2021 WL 778653, at *4 (S.D. Cal. Mar. 1, 2021)
- McRae v. Norton, No. 12-CV-1537 (KAM), 2012 WL 1268295, at *4 (E.D.N.Y. Apr. 13, 2012)
- United States ex rel. Lissack v. Sakura Glob. Cap. Mkts., Inc., 377 F.3d 145, 153 (2d Cir. 2004)
- Karupaiyan v. Wipro Ltd., No. 3:23-2005 (GC) (TJB), 2023 WL 4896672, at *3 (D.N.J. July 31, 2023)
- Rumfelt v. Jazzie Pools, Inc., No. 1:11cv217 (JCC/TCB), 2011 WL 2144553, at *5 (E.D. Va. May 31, 2011)
- Nordblad v. Deutsche Bank Nat'l Tr. Co., No. CV 13-07542 DDP (VBKx), 2013 WL 6859273, at *1 (C.D. Cal. Dec. 30, 2013)
- Miller v. Walt Disney Co. Channel 7 KABC, No. 2:13-cv-06144-ODW(SHx), 2013 WL 12122677, at *1 (C.D. Cal. Sept. 30, 2013)
- Abdelqader v. Great Lakes Higher Educ. Corp., No. C 95-2484 FMS, 1996 WL 175960, at *1 (N.D. Cal. Apr. 3, 1996)

- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)

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