

No: 20-56177

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SANDRA QUINONES

APPELLANT

v.

COUNTY OF ORANGE, A GOVERNMENTAL ENTITY ET AL.,

APPELLEES

On Appeal from the United States District Court
For the Central District of California
Honorable James V. Selna , Judge Presiding
United States District Court No. 8:19-cv-00666-JVS-KES

APPELLANTS OPENING BRIEF

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1.

JURISDICTIONAL STATEMENT

This Court of Appeals has jurisdiction pursuant to 28 USC§1291.

2.

INTRODUCTION

THE PURPOSE OF EQUITABLE TOLLING AND EQUITABLE ESTOPPEL IS TO DO JUSTICE/ JUSTICE IS INTUITIVE-THE COURT SHOULD FEEL RIGHT ABOUT ITS HOLDINGS ON THE LAW AND FACTS AND THAT ITS “JUDGMENT IS CONSONANT WITH JUSTICE”

“ For judgment shall again be consonant with justice and all the upright in heart will pursue it” (Psalm 94 verse 15, Chabad version).

“ But judgment shall return unto righteousness : and all the upright in heart shall follow it”. King James Version.

Appellant Sandra Quinones suffered one of the most extreme traumas a woman can suffer, the loss of her child while a prisoner, because of the Orange County jail. One of the effects of this trauma was Appellant Sandra Quinones’ inability to “deal with” this trauma. “ I can’t talk about it” and “ I can’t deal with it.” The victim could not pursue her legal remedies because she was so traumatized by the perpetrators. Appellant Sandra Quinones could not face her trauma for years. Her life became involved in substance abuse and homelessness. She had no access to lawyers. Then the publicity in a related case

“**Moon v. County of Orange**” (which includes a claim Ciera Stoetling for loss of a baby in the Orange County jails) against the Orange County jail finally gave her access to lawyers. The jail should not avoid liability because they so traumatized the victim that she was unable to pursue her legal remedies.

3.

STATEMENT OF ISSUES ON APPEAL

1. The District Court misstated facts plead by Appellant Sandra Quinones.
2. The threats by Defendants/ Appellees of criminal prosecution tolls the statute and /estopps.
3. Mental incapacity. Appellant Sandra Quinones was mentally incapable and traumatized from the time of her baby’s death due to Defendants/ Appellees behavior until now, equitably tolling.
4. 12(b)6 motions cannot adequately address equitable tolling issues.
5. Factors to consider homelessness, trauma, PTSD, lack of coping skills, substance use disorder, all of which were factors which equitably toll, were not considered.

4.

STATEMENT OF THE CASE AND FACTS

A) Nature of the Case:

On March 29, 2016, Appellant Sandra Quinones was in custody in the Orange County Women’s jail (OCWJ) and was 6 months pregnant. Her water broke and she pushed the call button in her cell with no response for two hours.

Appellant Sandra Quinones had informed Defendants/ Appellees (County of Orange) that she was pregnant and had been on “pregnant” status since entering the OCWJ months earlier.

Defendants/ Appellees failed to call an ambulance and decided to transport Sandra Quinones to the hospital on a non-emergency basis. Moreover, Defendants/ Appellees did not provide any medical treatment and, instead, stopped for Starbucks on the way to the hospital and made Appellant Sandra Quinones wait in the back of a van bleeding and in labor instead of transporting Appellant Sandra Quinones directly to the hospital.

Appellant Sandra Quinones and Baby Quinones were hospitalized and Baby Quinones died at the hospital.

To add insult to injury, Defendants/ Appellees continued to attempt to force Appellant Sandra Quinones to take her pre-natal vitamins every morning despite direct knowledge of the death of Baby Quinones.

Baby Quinones was born alive and did not perish as a result of a miscarriage. Baby Quinones died after leaving Appellant Sandra Quinones body.

Defendants/ Appellees were integral participants in the denial of medical care, the negligent treatment of Appellant Sandra Quinones and Baby Quinones, and other violations of Appellant Sandra Quinones’ and Baby Quinones’ rights, and/or failed to intervene to prevent these violations.

Appellant Sandra Quinones remained in custody until approximately April 14, 2016. As a result of the incident, Appellant Sandra Quinones suffers from, and was diagnosed with, severe and extreme post-traumatic stress disorder and depression. Appellant Sandra Quinones was also told during the incident that she did not deserve to have a baby and to not make an issue out of the incident as it was her fault, and if she does, she will be prosecuted for the death of the baby. On multiple occasions since April 14, 2016, Appellant Sandra Quinones has been placed back in Defendants/ Appellees custody due to her homelessness. This constant back and forth between jail and the streets made it impossible for even a mentally stable individual to take care of their affairs—let alone Appellant Sandra Quinones who suffers from debilitating PTSD and depression after being forced to wait in the car bleeding and in labor while Defendants/ Appellees employees stopped at Starbucks before taken to the hospital to deal with that medical condition. Relatedly, Appellant Sandra Quinones’ homelessness stems from her inability to function and take care of her affairs after the incident as a result of the severe emotional harm in combination with her mental impairments and implied threats. Appellant Sandra Quinones’ essentially lives on the goodwill of passersby as shelters will not admit her due to her mental incapacity and instability. Post-incident mental health evaluations conducted by Defendants/ Appellees employees revealed that Appellant Sandra Quinones has “difficulty with cognition and

comprehension, . . . lacks response when asked questions, . . . and answers questions inappropriately.” Appellant Sandra Quinones was also quoted multiple times as stating she believes “someone else is controlling her mind.” Additionally, her mental health records are riddled with references to PTSD, severe depression, severe anxiety, severe mental coping disorder and observations that Appellant Sandra Quinones is constantly in tears and has no interest in doing anything—let alone getting out of bed—as a result of the incident. Appellant Sandra Quinones’ continues to be homeless with zero means to complete any independent act of daily living due to her mental impairment and emotional harm caused by the incident. Only when a shelter volunteer who repeatedly refused Appellant Sandra Quinones entry to the shelter due to the volatility of her mental disorders and knew her story read an article about a similar case against Defendants/ Appellees was Appellant Sandra Quinones’ provided assistance to bring the instant action. **ER-26-28**.

B) Proceedings and Disposition:

Defendants moved to dismiss pursuant to 12(b)6 on statute of limitations grounds. The Court dismissed pursuant to 12(b)6 without leave to amend.

5.

SUMMARY OF THE ARGUMENT

12(b)6 dismissal without leave was wrong since the plead facts supported relief including equitable tolling and equitable estoppel.

6.

STANDARD OF REVIEW

“ We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). Dismissal is appropriate only when the Plaintiff can prove no set of facts in support of his claims that would entitle him to relief. We must take as true all allegations of material facts and construe them in the light most favorable to the nonmoving party”. **Guerreo v. Gates**, 442 F.3d 691, 703 (9th Cir. 2006); **Cervantes v. U.S.** 330 F.3d 1186, 1187 (9th Cir. 2003).

7.

ARGUMENT

1. **THE DISTRICT COURT MISSTATED FACTS
PLEAD BY APPELLANT SANDRA QUINONES**

The Court wrote: “ The Court agrees with County that Quinones fails to claim that at the time her claims accrued on March 28, 2016, she lacked legal capacity to make decisions.” **ER 10-11.**

But the complaint alleged:

“ On March 29, 2016, Appellant Sandra Quinones was in custody in the Orange County Women’s jail (OCWJ) and was 6 months pregnant. Her water broke and she pushed the call button in her cell with no response for two hours.

Appellant Sandra Quinones had informed Defendants/ Appellees (County of Orange) that she was pregnant and had been on “pregnant” status since entering the OCWJ months earlier.

Defendants/ Appellees failed to call an ambulance and decided to transport Sandra Quinones to the hospital on a non-emergency basis. Moreover, Defendants/ Appellees did not provide any medical treatment and, instead, stopped for Starbucks on the way to the hospital and made Appellant Sandra Quinones wait in the back of a van bleeding and in labor instead of transporting Appellant Sandra Quinones directly to the hospital.

Appellant Sandra Quinones and Baby Quinones were hospitalized and Baby Quinones died at the hospital.

To add insult to injury, Defendants/ Appellees continued to attempt to force Appellant Sandra Quinones to take her pre-natal vitamins every morning despite direct knowledge of the death of Baby Quinones.

Baby Quinones was born alive and did not perish as a result of a miscarriage. Baby Quinones died after leaving Appellant Sandra Quinones body.

Defendants/ Appellees were integral participants in the denial of medical care, the negligent treatment of Appellant Sandra Quinones and Baby Quinones, and other violations of Appellant Sandra Quinones' and Baby Quinones' rights, and/or failed to intervene to prevent these violations.

Appellant Sandra Quinones remained in custody until approximately April 14, 2016. As a result of the incident, Appellant Sandra Quinones suffers from, and was diagnosed with, severe and extreme post-traumatic stress disorder and depression. Appellant Sandra Quinones was also told during the incident that she did not deserve to have a baby and to not make an issue out of the incident as it was her fault, and if she does, she will be prosecuted for the death of the baby. On multiple occasions since April 14, 2016, Appellant Sandra Quinones has been placed back in Defendants/ Appellees custody due to her homelessness.

This constant back and forth between jail and the streets made it impossible for even a mentally stable individual to take care of their affairs—let alone Appellant Sandra Quinones who suffers from debilitating PTSD and depression after being forced to wait in the car bleeding and in labor while Defendants/ Appellees employees stopped at Starbucks before taken to the hospital to deal with that medical condition. Relatedly, Appellant Sandra Quinones' homelessness stems from her inability to function and take care of her affairs after the incident as a result of the severe emotional harm in combination with her mental impairments

and implied threats. Appellant Sandra Quinones' essentially lives on the goodwill of passersby as shelters will not admit her due to her mental incapacity and instability. Post-incident mental health evaluations conducted by Defendants/ Appellees employees revealed that Appellant Sandra Quinones has "difficulty with cognition and comprehension, . . . lacks response when asked questions, . . . and answers questions inappropriately." Appellant Sandra Quinones was also quoted multiple times as stating she believes "someone else is controlling her mind." Additionally, her mental health records are riddled with references to PTSD, severe depression, severe anxiety, severe mental coping disorder and observations that Appellant Sandra Quinones is constantly in tears and has no interest in doing anything—let alone getting out of bed—as a result of the incident. Appellant Sandra Quinones' continues to be homeless with zero means to complete any independent act of daily living due to her mental impairment and emotional harm caused by the incident.

Only when a shelter volunteer who repeatedly refused Appellant Sandra Quinones entry to the shelter due to the volatility of her mental disorders and knew her story read an article about a similar case against Defendants/ Appellees was Appellant Sandra Quinones' provided assistance to bring the instant action. **ER-26-28.**

That is, during the incident, Appellant Sandra Quinones was traumatized by Defendants/Appellees and told “to not make an issue out of the incident, that it was her fault and if she does, she will be prosecuted for the death of the baby”. **ER-26-28**. (In California the crime of murder has no statute of limitations).

2. **THE THREATS BY DEFENDANTS/APPELLEES OF CRIMINAL PROSECUTION TOLLS THE STATUTE AND ESTOPPS**

The threat to criminally prosecute is equitable tolling/estoppel.

“ Appellant Sandra Quinones was also told by Defendants/ Appellees during the incident that she did not deserve to have a baby and to not make an issue out of the incident as it was her fault, and if she does, she will be prosecuted for the death of the baby”. **ER-26-28**.

As the Rutter Group points out:

“**[7:100]** Threats or Duress: A defendant whose threats have caused Plaintiff to delay filing suit (or filing a governmental tort claim) may be estopped from raising the delay as a defense. **John R. v. Oakland United School Dist**, 48 C3d 438, 445, 256 CR 766, 769-770 (1989).

[7:100.1] Teacher’s threats allegedly prevented student and his parents from filing a timely claim against school district for sexual abuse by teacher. The time for filing a claim was tolled during the period that teacher’s threats prevented

Plaintiffs from pursuing their claims. **John R. v. Oakland United School Dist.**, supra, 48 C3d at 445-446 , 256 CR at 769-770; **Doe v. Bakersfield City School District**, 136 CA4th 556, 573-574, 39 Cr3d 79, 91 (2006).

[7:100.2] Defendant threatened to have Plaintiff deported to Iraq if he sued, and Plaintiff reasonably concluded Defendant was estopped from pleading the statute of limitations defense. **Ateeq v. Najor**, 15 CA4th 1351, 1355-1356, 19 CR2d 320, 322-323. **Rutter Group, California Practice Guide Civil Procedure Before Trial Statutes of Limitations, Equitable Estoppel** §§ 7:100, 7:100.1, 7:100.2.

The Orange County jail is a violent place where the prisoners live in fear of physical violence by the guards. Examples are set out in the opening brief in the related appeal case of **Moon v. County of Orange**, Appeal Case No: 20-56076.

This palpable threat caused both the inability to function, equitable tolling, and equitable estoppel (as well as the misinformation “it is your fault”).

3. MENTAL INCAPACITY APPELLANT SANDRA QUINONES WAS MENTALLY INCAPABLE AND TRAUMATIZED FROM THE TIME OF HER BABY’S DEATH DUE TO DEFENDANTS/APPELLEES BEHAVIOR UNTIL NOW, EQUITABLY TOLLING.

Appellant Sandra Quinones was mentally incapacitated and traumatized from the time of her baby’s death to now.

Even if the mental incapacity was not constant it must be evaluated to determine how much of the relevant period of time “should be equitably tolled by virtue of ... mental incompetence”. **Laws v. Lamarque**, 351 F.3d 919, 925, (9th Cir. 2003). (Habeas Corpus).

“We have already held that a “putative habeas petitioner’s mental incompetency (is) a condition that is, obviously, an extraordinary circumstance beyond the prisoner’s control,” so “mental incompetency justifies equitable tolling” of the AEDPA statute of limitations. **Calderon v. United States District Court (Kelly)**, 163 F.3d 530, 541 (9th Cir. 1998) (en banc).

We have also suggested that “[t]he firmly entrenched common law right to competence persisting beyond trial is a strong indicator of a constitutional due process right” to competency is post-conviction proceedings or to a stay of proceedings until competence is regained. **Rohan ex rel. Gates v. Woodford**, 334 F.3d 803, 813 (9th Cir. 2003).

While **Calderon (Kelly)** and Rohan were death penalty cases and in different procedural postures from the present one, their basic principle is plainly applicable here: Where a habeas petitioner’s mental incompetence in fact caused him to fail to meet the AEDPA filing deadline, his delay was caused by an “extraordinary circumstance beyond (his) control,” and the deadline should be equitably tolled.” **Laws**, at 351F.3d 919,923.

Only with outside serendipitous assistance was this lawsuit possible.

4. **12(b)6 MOTIONS CANNOT ADEQUATELY ADDRESS**

EQUITABLE TOLLING ISSUES

The Ninth Circuit has explained that “because the applicability of the equitable tolling doctrine often depends on matters outside the pleadings, it ‘is not generally amendable to resolution on a Rule 12(b)(6) motion.’” **Supermail Cargo, Inc v. United States**, 68 F.3d 1204, 1206 (9th Cir. 1995) quoting **Cervantes v. City of San Diego**, 5 F.3d 1273, 1276 (9th Cir. 1993). **Valentine v. City of Concord**, 2016WL2851661 many factors must be evaluated, for example in Valentine.

“After the incident, Plaintiff alleges he was diagnosed with serious mental health issues stemming from the injuries he sustained, including depression and PTSD . FAC¶25. He further alleges he was “prescribed powerful pain and psychiatric medicines,” which made him unable to “take care of his affairs and [he] became homeless-living on the streets,” until “being moved to a shelter in Concord in late 2015 by a homeless outreach organization.” Id. At this stage, Plaintiff has put forth enough allegations to establish that he lacked the capacity to make decisions and that his mental incompetence was caused by Defendant’s conduct.” **Valentine v. City of Concord**, 2016WL2851661.

Appellant Sandra Quinones disabilities are more similar to the tragic situation of Cynthia Stoll who was also dysfunctional about anything relating to her trauma Appellant Sandra Quinones' dysfunction was due to her outrageous treatment after her water broke and thereafter by the jail guards. Cynthia Stoll trauma was caused by the post office.

“ The post office is not entitled to benefit from the fact that its own admittedly outrageous acts left Stoll so broken and damaged that she cannot protect her own rights. The effects of the repeated sexual abuse, rape, and assault she experienced left her severely impaired and unable to function in many respects. She has attempted suicide numerous times and may do so again. She is unable to read, open mail, or function in society. Thus, her failure to assert her claim within the statutory period was a direct consequences of the Post Office's wrong conduct.” **Stoll v. Runyon, 165 F.3d 1238, 1242** (9th Cir. 1999) .

Victims who “can't talk about” the traumatic events giving rise to claims against perpetrators because this is part of the damage, like Appellant Sandra Quinones, are entitled to have their claims heard.

The issue is whether Appellant Sandra Quinones could bring this claim. The representation by the public defender in the criminal matter for which she was in jail actually argues against competence. The public defender was appointed by the

Court, not chosen by Appellant Sandra Quinones . At various times different public defenders represented her, again not of her choice.

Finally, of course, the public defender could not bring this claim, or any civil damage claim. The public defenders are also, every one of them, employed of Defendants County of Orange. Even if represented by potential counsel the attorney-client relationship may be impaired by mental Illinois and equitable tolling may be appropriate. *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999)

Equity in Appellant Sandra Quinones' case also relieves her of claim requirements. No government claim needs to be filed at all if;

“The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified in section 911.2 fir the presentation of the claim and by reason of that disability failed to present acclaim during that time”. California Government Code §946.6(c)(3).

“In actual effect, section 946.6 is a remedial section which relieves the claimant of the necessity of filing any claim at all with the public entity.” **Savage v. State of California**, 4 Cal.App.3d 793, 796 (1970).

Finally the deputies (guards) threatened to prosecute her for murder (a murder prosecution has no time limit), are similar to the police threats in **McMahon v. Valenzuela** : “ Crucially, the “clock[only] ‘starts’ again once the effects of those affirmative acts have ceased.” *Id.* (emphasis added). Therefore, so

long as a jury could find that the effect of the officers' threats persisted –e.g.so long as they reasonably contributed to McMahon's failure to file a claim with the City-statute of limitations in arguably tolled and the City is precluded from asserting an estoppel defense." McMahon v. Valenzuela, 2015 WL5680305 (CD Cal) tolls and estopped, but really equitable estoppel means the same thing practically as tolling, that is, the case can proceed on its merits.

The Defendants/ Appellees are not entitled to benefit from the trauma they caused to Appellant Sandra Quinones. This case is not appropriate for 12(b)6 and there are jury issues.

5. **FACTORS TO CONSIDER HOMELESSNESS, TRAUMA, PTSD, LACK OF COPING SKILLS, SUBSTANCE USE DISORDER, ALL OF WHICH WERE FACTORS WHICH EQUITABLY TOLL, WERE NOT CONSIDERED.**

The Ninth Circuit has explained that “because the applicability of the equitable tolling doctrine often depends on matters outside the pleadings, it “is not generally amendable to resolution on a Rule 12(b)(6) motion.” Supermail Cargo, Inc v. United States, 68 F.3d 1204, 1206 (9th Cir. 1995) (quoting Cervantes v. City of San Diego, 5F.3d 1273, 1276 (9th Cir. 1993)).”

Courts have looked to different factors to establish mental incapacity.

The DC Circuit set the standard as “incapable of “rational thought or

deliberate decisions making.” **Melendez-Arroyo v. Cutler**, 273 F.3d 30, 37 (2001), or “incapable of handling (his) own affairs or unable to function [in]society,” **Smith-Haynie**, 155 F.3d at 580 and wrote;

“After the incident, Plaintiff alleges he was diagnosed with serious mental health issues stemming from the injuries he sustained, including depression and PTSD. FAC ¶25. He further alleges he was “prescribed powerful pain and psychiatric medicines,” which made him unable “take care of his affairs and [he] became homeless-living on the streets,” until “being moved to a shelter in Concord in late 2015 by a homeless outreach organization.” Id. At this stage, Plaintiff has put forth enough allegations to establish that he lacked the capacity to make decisions and that his mental incompetence was caused by Defendant’s conduct.” **Barrett v. Principi**, 363 F.3d 1316 (D.C. Cir. 2004) (Collecting cases).

Other factors include PTSD, depression, homelessness, and being “unable to take care of his affairs”.

California Code of Civil Procedure Section 352(a) provide that if a Plaintiff is “lacking the legal capacity to make decisions” when his cause of action accrues, the period of his disability is excluded from the time within which the action must be commenced. “ This tolling provision has been held applicable to one who is incapable of caring for his or her property or transacting business, or understanding

the nature or effects of his or her acts.” **Flores v. Flores**, 2015 WL 251855, at 3 (E.D. Cal. Jan 20, 2015).

Cynthia Stoll, as with Appellant Sandra Quinones, was so psychiatrically impaired by Defendants conduct that reliving the events themselves caused her to shut down. Appellant Sandra Quinones, to this day, often “can’t talk about “ what happened to her.

It is the facts of each case which determine tolling or estoppel. Sadly the facts are bad enough, justice requires that Appellant Sandra Quinones claim be heard.

8.

CONCLUSION

“ Equitable tolling is a judge-made doctrine “which operates independently of the literal wording of the Code of Civil Procedure” to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.” **Lantzy v. Centex Homes**, 31 Cal.4th 363,370 (2003).

“ This Court is not powerless to formulate rules of procedure where justice demands it. Indeed, it has shown itself ready to adapt rules of procedure to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits.” **Addison v. State of California**, 21 Cal.3d 313, 319 (1978).

“ The equitable tolling doctrine fosters the policy of the law of this state which favors avoiding forfeitures and allowing good faith litigants their day in Court.” **Addison, supra**, 21 Cal.3d 313, 320, 321 (1978).

Justice, a sense that the Court is doing the right thing, means that Appellant Sandra Quinones is allowed to have a trial on the merits, and that this Court reverses the dismissal and allows Appellant Sandra Quinones to proceed to trial.

DATED: March 8, 2021

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. P. Herman", is written over a horizontal line.

RICHARD P. HERMAN
Attorney for Appellant

STATEMENT OF RELATED CASE PURSUANT TO
CIRCUIT RULE 28-2.6

I am aware of one related case currently pending in this court. The 9th Cir.

Case Number: 20-56076, **Mark Moon v. County of Orange et al.**,

DATED: March 8, 2021

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. P. Herman", is written over a horizontal line.

RICHARD P. HERMAN
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Ninth Circuit Rule 32(a)(7)(B), I certify that the Plaintiffs/Appellants Opening Brief is double spaced, proportionately spaced (Times New Roman), has type faced of 14 points and contains 3,950 words.

DATED: March 8, 2021

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. P. Herman", is written over a horizontal line.

RICHARD P. HERMAN
Attorney for Appellant

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

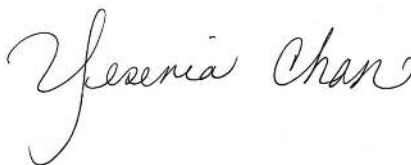
I am employed in the aforesaid County of Orange, State of California;

I am over the age of 18 and not a party to the within action; my address is P. O. Box 53114, Irvine, California 92619. On March 8, 2021, I served the foregoing document, described as **Appellant Sandra Quinones Opening Appeal Brief, Excerpts of Record (VOL 1)** on the interested parties in this action. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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(X) BY EMAIL: I caused all of the pages of the above-entitled document to be sent to the recipient noted at their email address indicated.

(X) I declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this court at whose direction the service was made and that the above is true and correct. Executed on March 8, 2021 in Rancho Santa Margarita, California.



Yesenia Chan