

case no.

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH EMANUEL,

Petitioner,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED:

Is a "consent to collection of fee form" that is not an inmate account form or an inmate trust-fund account statement (or institutional equivalent) considered a proceedings in forma pauperis under 28 U.S.C. § 1915(a)(2)? If not, does this form violates constitutional: (1) due process; (2) access to the courts; and (3) equal protection clause under 28 U.S.C. § 1915(b)(4)?

INTERESTED PARTIES:

There are no parties to the proceedings other than those named in the caption of the case.

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Petitioner requestfully prays that a writ of certiorari issue
to review the judgment below.

OPINION BELOW

The order of the United States Court of Appeals appears
at Appendix A.

JURISDICTION

Jurisdiction of this court is invoked under 28 U.S.C. §§ 1254(1) and Part III, Rule 10 of the Rules of the Supreme Court of the United States which states in part: "or has so far departed from the accepted and usual course of judicial proceedings. The order of the court of appeals dismissing Petitioner's appeal was entered on or about March 16, 2017. Petitioner sought, and the Court granted, a 60-day extension of time until August 13, 2018 for filing a petition for writ of certiorari. The petition is timely filed pursuant to Supreme Court Rule 13.1; and Rule 13.5.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915

(a)(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent)...

(b)(4) in no event shall a prisoner be prohibited from bringing a civil action "or" appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

STATEMENT OF CASE

On January 11, 2017, Joseph Emanuel ("hereinafter referred as 'Petitioner") filed a lawsuit. The district court granted defendant's summary judgment under a memorandum opinion order. See Appendix A. A notice of appeal was filed to the U.S. District Court for the District of Columbia. The U.S. Court of Appeals for the District of Columbia submitted an order for Petitioner to complete as follows: (1) motion for leave to proceed an appeal in forma pauperis; (2) consent to collection of fees from trust account; and (3) prisoner's trust account report. Petitioner filed a request to counselor for a copy of 6-month trust fund account. During this time, U.S. Penitentiary Lee ("institution"), where Petitioner is located have been on lockdown on numerous occasion, therefore, sent an extension of time, which was granted with the request of all three documents to be completed which are stated above, supra. A motion for leave to proceed on appeal in forma pauperis was filed without consent to collection of fees form and prisoner's trust account report after the institution returned to normal operation. On or about January 22, 2018, Presiding Chief Judge Beryl A. Howell grant(ed) motion for leave to appeal in forma pauperis and instructed deputy clerk to transmit his order to Court of Appeals. U.S. Court of Appeals for the District of Columbia Circuit dismissed the case for lack of prosecution.

REASONS FOR GRANTING THE PETITION

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT
HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE
OF JUDICIAL PROCEEDINGS UNDER 28 U.S.C. § 1915(a)(2)
AND (b)(4) WHICH CONSTITUTE A DUE PROCESS VIOLATION:

According to 28 U.S.C. § 1915(a)(2), when a prisoner brings forth a civil action and/or appeal, he has a constitutional right to file under *informa pauperis*, in doing so, the statute instructs that he submit an affidavit with a certified copy of a 6-month trust fund statement (or) "institutional equivalent" . . . nothing more or less. Further 1915(b)(4) instructs the lower courts, a prisoner should not be prohibited from filing a civil action and/or appeal, respectively. When you take a closer look at the record and compare the provision(s) of § 1915, it is self-evident, that Petitioner was granted permission to proceed *informa pauperis* due to the satisfaction of 28 U.S.C. § 1915(a)(2) which states: "institutional equivalent", by the district court judge. And, the statute does not instruct the court nor the prisoner to file a consent to collection of fees from trust account. Also, the collection of fees form is not an "institutional equivalent". Due to these facts stated above, the court of appeals still dismissed petitioner's appeal which is a violation of due process. Since it is prohibited for the court to dismiss petitioner's appeal, he is left with no access to the court. Because of petitioner's financial insolvency as a U.S. Federal prisoner, he has an equal protection right to be safeguarded under 28 U.S.C. § 1915 et seq. We need not pause to see if he is required to pay partial filing fee of 20% and then required installments if exceed \$10.00 in account. see: §1915(b)(1)-(2).

Also see: U.S. v. Jones, 215 F.3d 467, 4699-70(4th Cir.2000)(prisoner required to pay filing fee for appeal of denied motion for return of property seized during arrest and if unable to pay, prisoner can apply to pay in installments.). Petitioner does not dispute this requirement. If the Framers of this statute wanted the lower courts to exercise discretion to sign a consent collection fees form that is not mentioned in 28 U.S.C. § 1915 et seq, it would have done so, respectfully.

CONCLUSION

Since the collection of fees form is not part of 28 U.S.C. § 1915 provision. Petitioner should not be forced to sign this form and his appeal should not be prohibited to move forward for relief. Wherefore, this petition for writ of certiorari should be granted.

Respect:

J. Emanuel (c)c(r)
Joseph Emanuel
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Date: *A.D. August 13, 2018*