

No.

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**IN THE SUPREME COURT OF THE  
UNITED STATES**

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**KEERUT SINGH,**

**Petitioner,**

**v.**

**UNITED STATES POSTAL SERVICE,**

**Respondent.**

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**On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether the Ninth Circuit failed to comply with its own precedents under 5 U.S.C. §§ 552 and 552a thus resulting in a severe departure from the typical course of judicial proceedings?
2. Whether the Ninth Circuit failed to comply with the proper standard for issuing a memorandum?

## **STATEMENT OF JURISDICTION**

The Ninth Circuit affirmed on February 23, 2018. Petitioner filed a timely petition for rehearing. The Ninth Circuit denied the petition for rehearing on July 02, 2018. The writ of certiorari is timely. *See* Sup. Ct. R. 13(3). This Court has jurisdiction under 28 U.S.C. § 1254.

## **STATEMENT OF CASE**

Keerut Singh is a former employee of the United States Postal Service (USPS). In late 2016, he filed multiple requests with USPS under the Freedom of Information Act (FOIA) and Privacy Act requesting records relating to his employment as a non-career mail carrier. The United States Postal Service is divided into three separate branches. The Postal Service, the Postal Inspection Service (USPIS), and the Office of Inspector General (OIG). Singh submitted requests to all three branches. USPS did not provide the records Singh requested. Singh appealed through the administrative processes of all three branches. Unsatisfied with USPS's responses, he filed suit in the Western District of Washington at Seattle. He alleged, *inter alia*, that USPS failed to conduct a reasonable search, and that it unlawfully and purposely withheld records under 5 U.S.C. §§ 552 and 552a. The district

court had jurisdiction pursuant to §§ 552(a)(4)(B) and 552a(g)(1)(D). The district court granted USPS's motion for summary judgment finding that the government conducted a reasonable search. Singh filed a timely appeal. The Ninth Circuit had jurisdiction under 28 U.S.C. § 1291. Singh filed a large opening brief. He followed that up with a lengthy reply brief. In these briefs, it was apparent that USPS did not conduct a reasonable search. It was also apparent that there was a material issue of fact. The Ninth Circuit affirmed in an extremely short memorandum without any elaboration. The Ninth Circuit did not address the merits of the case. It did not reach a legal determination. It also did not justify its use of a memorandum in this case.

## ARGUMENT

### A. Legal Standard

The Ninth Circuit is committed to a pure *de novo* standard of review in FOIA cases. *See Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016) (en banc). A similar standard applies to Privacy Act cases. *Louis v. Dep't of Labor*, 419 F.3d 970, 973 (9th Cir. 2005). An appellate *de novo* review is “[a]n appeal in which the appellate court uses the trial court's record but reviews the evidence

and law without deference to the trial court's rulings." *See appeal de novo*, BLACK'S LAW DICTIONARY (10th ed. 2014). This does not differ from the Ninth Circuit's own definition of *de novo*. A *de novo* review is viewed "from the same position as the district court." *Lawrence v. Dep't of Interior*, 525 F.3d 916, 920 (9th Cir. 2008). The matter is considered anew, as if there was no decision below. *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006). *See Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (reviewing a decision *de novo* "with no deference given to the district court's decision"). A memorandum may only be issued in rare circumstances when an appeal is frivolous, or a perfunctory decision is appropriate because it "follows a well-established legal principle or does not relate to any point of law." *See memorandum opinion*, BLACK'S LAW DICTIONARY (10th ed. 2014).

## **B. Reasons For Granting Writ**

This Court does not reach the merits. The main issue before the Court is simple and can be resolved with summary disposition. The Ninth Circuit failed to comply with its own standard of review in FOIA and Privacy Act cases. Singh's case is not frivolous, and the Ninth Circuit failed to address the issues raised in his briefing. The Ninth

Circuit did not explain its justification for issuing a memorandum in its decision. The Ninth Circuit did not make a legal determination. A case does not become frivolous if a court happens not to like the merits. The Ninth Circuit's decision made clear that Singh's case was given very little consideration. Singh's *pro se* status clearly impacted the decision. Had Singh been an attorney representing himself, the Ninth Circuit would not have treated him this way. The Supreme Court has a responsibility to uphold the basic values of the judiciary. The public loses credibility in the system when it sees decisions like this. We must all be treated fairly in the eyes of the law. Not every American is blessed with the legal education of judges and law clerks. This Court has made clear for decades that *pro se* litigants shall be treated with respect. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Ninth Circuit's actions constitute a departure "from the accepted and usual course of judicial proceedings," and this Court should exercise its "supervisory power" and reverse. *See* Sup. Ct. R. 10(a). The Ninth Circuit deprived Singh of his appeal by not conducting a *de novo* review. In doing so, it sent out a signal that Singh is a second-class citizen. Singh was forced to spend his own money to file the case in the Ninth

Circuit. He was also forced to spend his own money to comply with the Ninth Circuit's binding requirements for the Excerpts of Record. He deserves a thorough and just determination. Singh upheld his end of the bargain. The Ninth Circuit failed to uphold their end. This Court should order the Ninth Circuit to comply with its own precedents by conducting a proper *de novo* review in this case. At minimum, the Ninth Circuit should be required to justify its use of a memorandum.

## **CONCLUSION**

Petitioner respectfully asks this Court to reverse and remand back to the Ninth Circuit via summary disposition. No further briefing is required by either party in this case.

Respectfully Submitted,

*s/Keerut Singh*