

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

<>_____

EARL REYES,

Petitioner,

v.

MICHAEL DUGGAN, Assistant,
Court Clerk/Case Analyst to
the Office of the Clerk for
the United States Supreme
Court; and the United States,

Respondents.

<>_____

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

<>_____

PETITION FOR A WRIT OF CERTIORARI

<>_____

Mr. Noel J. Francisco
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

QUESTIONS PRESENTED

The questions presented are:

- 1 Whether the alleged facts that Defendant Duggan intentionally discriminated against Reyes (suspect class). whereby impeding the timely filing of his perfected petition , and, denied him access to courts whereby preventing the filing of his perfected ancillary complaint- in the form of Application to an Individual Justice, containing pleadings for relief, states a claim for violation of the First, Fifth, and, Fourteenth Amendments to the United States Constitution, and as a consequence did the Court of Appeals by holding that it doesn't-, and, denying Reyes's, motion for the appointment of counsel on appeal, abuse it's discretion, and, did, prejudice ensue from the loss of the right to trial by jury, in contemplation of the Seventh Amendment to the United States Constitution

2. Whether the kind of allegations made by Reyes, makes the constitutional claims invoked by him self-enforcing and, so did the Court of Appeals commit to prejudicial error- whereby affirming the District Court's Order simultaneously dismissing Reyes's, claim with prejudice, and, charging him with a strike, pursuant to section 1915A(b)(1) of the United States Code

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PETITION FOR A WRIT OF CERTIORARI

Earl Reyes, whom from the custody of the New York State Department of Corrections, respectfully requests that this Court consent to, review the final judgment of the United States Court of Appeals for the District of Columbia Circuit

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OPINIONS BELOW

The panel Orders of the Court of Appeals were not reported in the Federal Reporter, and, is reproduced, and, annexed herewith, for viewing on pages 1 & 3 of the Appendix attached hereto. The District Court Order is unreported, and, Petitioner incorporates by reference docket number seven, from the docket sheet issued by the United States District Court for the District of Columbia, -CIVIL DOCKET FOR CASE # 1:17-cv-01106-UNA

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JURISDICTION

The judgment that Petitioner seeks review of was entered by the Court of Appeals on the eighteenth day of April, 2018. The Orders denying the petition for panel rehearing, and, rehearing *en banc* [italics added], was entered on the seventeenth day of July 2018. Petitioner invokes the exercise of this Court's jurisdiction, in this case pursuant to sections 1257, and 1651 of Title 28 United States Code.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The First Amendment to the United States Constitution states:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment to the United States Constitution states:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Seventh Amendment to the United States Constitution states: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law."

Section One of the Fourteenth Amendment to the United States Constitution states: "All persons born or naturalized in the

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside, No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws "

Section 1615(a) of Title 28 United States Code, states: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law."

Section 1651(b) of Title 28 United States Code, states: "An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

Section 1915A(b)(1) of Title 28 United States Code, states:

(b) Grounds for dismissal On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted "

Section 1915(d) of Title 28 United States code, states: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegations of poverty is untrue, or satisfied that the action is frivolous or malicious "

STATEMENT OF THE CASE

On December 28, 2016, Reyes, handed to prison authorities, for mailing and processing, his perfected petition for a writ of certiorari, and, therewith a letter addressed to the Clerk of the Court Scott S. Harris, which was received along with said petition, by the Office of the Clerk, on January 13, 2017. The letter stated in the second to last sentence that "for filing declaration please take notice of page 18 of petition " (COMPLAINT at ii , incorporated by reference) Thereby referring to Reyes's, declaration pursuant to 28 U S C §1746, setting out that first class postage has been prepaid in order to satisfy the Rule 29 2 requirement of the Supreme Court of the United States Rules Id , at iii.. On or about January 30, 2017, Reyes received an off-white colored copy [indicating that Defendant Duggan remained in possession of originals] of Reyes's letter and, petition, along with a letter endorsed by Defendant Duggan, that stated in part "[t]he petition was not timely received nor postmarked by the due date[,]" and that "[t]he petition may not be filed until the required affidavit is received." Id On or about January 31, 2017, Reyes, sent a letter addressed to Scott S. Harris, which was received by the Office of the Clerk, Supreme Court of the United States on February 8, 2017 In said letter Reyes stated in effect that a mistake has been made with respect to not filing said petition with the Court, whereas all the requirements have been met, and, Reyes's declaration should have been credited, as opposed to

being completely negated as it was. Id.. On February 8, 2017, Reyes, sought to file his Application to an Individual Justice [namely Justice Ginsburg] in order to obtain review of Defendant Duggan's, actions stemming from his letter dated January 26, 2017, which was in compliance with this Court's Rules. Said application was in request for relief such as Judicial intervention for the discriminatory acts of Defendant Duggan, against a suspect class, and, denial of access to courts; that he be prohibited from processing my papers; and that he be deposed for inquiry as to whether Defendant Duggan, was in contact with the New York District Attorney's Office, because Reyes, suspected that office to have had a hand in these kind of unusual occurrences, especially because Reyes, was alleging actual innocence in part due to destruction of important evidence by such-. Id Said application was returned to him by Defendant Duggan, and, as such prevented the filing with this Court, he also made no record of Reyes's attempt to file such. As such, the discrimination continued when on or about February 16, 2017, Reyes, received a response to the letter, dated February 13, 2017, endorsed by Defendant Duggan that stated:- "[p]lease resubmit your petition with the enclosed affidavit of timely mailing," Id., at iv., [indicating that the substance of Reyes's letters were being ignored.] as such so was Reyes's letter returned to him. On or about February 25, 2017, Reyes, received a letter dated February 22, 2017, and, endorsed by Defendant Duggan, requesting again that Reyes resubmit his

petition which was already submitted[indicating that not only was Defendant Duggan, refusing to file Reyes's original. and, perfected petition, but that he was also refusing to file his application to an individual Justice]thus, said Defendant intercepted said application, that was addressed to Scott S Harris to prevent the filing thereof on or about February 28, 2017, Reyes submitted a copy of the exact same petition, including the declaration that was submitted in the first instance, with proof that such was handed to the prison authorities on the designated date for filing[Defendant Duggan was covertly requiring Reyes to submit additional proof because said defendant would not credit Reyes's original declaration of inmate filing] In addition, Reyes, enclosed an informal letter addressed to Scott S Harris, Expressing the humiliation experienced, because of Defendant Duggan's actions in making Reyes re-submit his petition on a whim, whereas said defendant already possessed the original On or about March 11, 2017, Reyes, received a letter from Defendant Duggan, informing that the petition has been filed on December 28, 2016, and placed on the docket March 9, 2017 Except, Reyes's application to an individual Justice, thus far has not been filed with this Court

Reyes, then filed a Bivens complaint with the United States District Court District of Columbia, incorporating the allegations above and claiming that Defendant Duggan by requiring Reyes, to re-submit his petition for no valid reason, and in refusing to file his application to an individual

Justice, discriminated against Reyes, for being a member of the Latin Americans, Pro Se litigants, poor persons, prisoners, or has been treated different than others similarly situated, intentionally, and, without rational basis, and, constituted a denial of access to courts in violation of the First, Fifth, and, Fourteenth Amendments to the United States Constitution. Subsequently, the District Court dismissed Reyes's, complaint for failure to state a claim where relief can be granted, with prejudice, and, was charged with a strike. Reyes, in turn appealed to the United States Court of Appeals for the District of Columbia Circuit. The appeal was affirmed, and, Reyes's request for the appointment of counsel was denied.

Reyes, now requests this Court's consent to review the Court of Appeals' decision.

REASONS FOR GRANTING THE WRIT

REYES STATED A CLAIM FOR INTENTIONAL DISCRIMINATION AGAINST A SUSPECT CLASS & DENIAL OF ACCESS TO COURTS IN VIOLATION OF THE FIRST, FIFTH & FOURTEENTH AMENDMENTS & PREJUDICE ENSUED WHERE REYES LOST HIS RIGHT TO TRIAL BY JURY-ACCORD THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

On review, this Court could find that the allegations set forth in Reyes's complaint are in compliance with the rulings in *Ne Fla. Chapter of Associated Gen Contractors of Am. v City of Jacksonville Fla.*, 508 U S. 656 (1993); *Schneider v Rusk*, 377 U S 163 (1964); *Curin v. Wallace*, 305 U S 1 (1939); *Village of Willowbrook v Olech*, 528 U.S. 562 (2000); and, *Christopher v. Harbury*, 536 U.S. 403 (2002). First Reyes, alleged in sanction part, that although a poor person, thus a suspect class, see

8.

Cruz v. Hauck, 404 U.S. 59, 65 (1971), he was intentionally discriminated against. It appears that discrimination could violate the equal protection clause. U.S. v. Morrison, 5529 U.S. 598, see als, Giano v. Senkowski, 54 F.3d 1050, 1057 (2d Cir. 1995) (to state a valid claim for denial of equal protection a plaintiff generally must allege "purposeful discrimination[...]directed at an identifiable suspect class") id.. Second Reyes, alleged denial of equal treatment. See American Freedom Law Center v. Obama, 821 F.3d 44, 45 (D.C. Cir. 2016) ("the 'injury in fact' element of standing in ... an equal protection case is denial of equal treatment resulting from imposition of the barrier...") quoting, Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville Fla., 508 U.S. 656, 666 (1993);Schneider v. rusk, 377 U.S. 163, 168 ("while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process ") See also, Tucker v. Branker, 142 F.3d 1294, 1297 (D.C. Cir. 1998) ("Prisoners have a right , as a matter of due process to adequate, effective and meaningful access to courts."). Reyes, also alleged covert discrediting of his Declaration of inmate Filing, resulting in him having to offer supplemental proof, in order for acceptance of an already perfected petition, and, unnecessarily having to file additional copies of his petition. See, Ne. Fla. Chapter of Associated Gen. Contractors of Am v. City of Jacksonville Fla , 508 U.S 656, 666 (1993) ("when the government erects a barrier that makes it

more difficult to obtain a benefit for members of one group than it is for members of another group, a member of the former group need not allege that he would have obtained the benefit but for the barrier in order to establish standing "). See, also *Curin v Wallace*, 306 U.S. 1 (1939) ("discrimination of such character as to bring into operation the due process clause of the Fifth Amendment "). Reyes, also alleged that the infringement became augmented, when during the arduous process that he was subjected to, he attempted to file an ancillary complaint in the form of an Application to an Individual Justice, pursuant to Rule 22, of the Supreme Court of the United States Court Rules Said rule indicates that Reyes's application should have been transmitted "promptly" as opposed to not at all *Id.* Thus Reyes's, allegations comports with the ruling in *Christopher v Harbury*, 536 U.S. 403, 414, 415 (2002) ("Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong ") The circumstances in this case render review appropriate at this Juncture

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THE KIND OF ALLEGATIONS MADE BY REYES, MAKES THE CONSTITUTIONAL CLAIMS SELF-ENFORCING, AND, SO THE COURT OF APPEALS COMMITTED TO PREJUDICIAL ERROR-WHEN AFFIRMING THE DISTRICT COURT'S ORDER SIMULTANEOUSLY DISMISSING THIS CASE WITH PREJUDICE, AND, CHARGING REYES WITH A STRIKE, PURSUANT TO SECTION 1915A(b)(1), OF THE UNITED STATES CODE.


The Court of Appeals' decision effectively went beyond the language of section 1915A(b)(1). *Jones v. Bock*, 549 U.S. 199, 212-13, 221-24 (2007). The Court in *Profit Estate Investor Inc*, 508 U.S. 49, 60-61 (1993), held that sanctions may not be imposed against persons who bring litigation unless the litigation is both objectively and subjectively without basis, and required both subjective and objective intent. In addition, section 1915A(b)(1), of the United States Code, addresses conduct of litigation in court and not internal operations of prisons, it is governed by the same First Amendment standards as other "free world" free speech claims. *Thornburg v. Abbott*, 490 U.S. 401, 403 (1989); see also *NAACP v. Button*, 371 U.S. 415, 438 (1963) ("Precision of regulation must be the touchstone in an area so closely touching, our most precious freedoms"). Applying, this principle, consistently with section 1915A(b)(1), this Court could find that Reyes, filed his complaint with an objective and subjective belief that his case has merit. First, in regards to the law applicable in the Court of Appeals for the District of Columbia Circuit, a panel thereof held in a similar case, that the plaintiff (*Spradley*) had arguably stated a claim with basis in law or fact, *Spradley v. Spaniol*, No. 87-____ (D.C. Cir. 1987), and, remanded the case for responsive pleadings, where it was alleged that the defendant (*Spaniol*)

("impeded the timely filing of plaintiff's papers and defeated or prejudiced his rights in federal court ") Spradley v Spaniol, 604 F.Supp. 10, 11 (D D C. 1998) Thus, Spradley's claimed violation of his constitutional right to access to courts and denial of equal protection was upheld by the Court of Appeals In another case containing similar allegations a panel of the Court of Appeals for the District of Columbia Circuit concluded that-("[b]ecause the court dismissed appellant's damage claim without responsive pleadings, and because we are unable to determine without more than appellant's claim before us whether his damage claim is frivolous, the case must be remanded to the district court ") Mc Govern v Spagnolo, No 87 7187 (D.C. Cir July 12, 1988) (per curiam) These D C Circuit cases apparently haven't been overruled by en banc procedure or otherwise, and, in Reyes's, case, the Court of Appeals begged this question Now the underlying question here is whether Reyes, can actually be sanctioned for following the law of the land and believing what lower federal courts have said, prior to Reyes, filing his complaint In addition, counsel should have been appointed at the appellate level

CONCLUSION

The circumstances of this case, warrants this Court's consent to review, in order to meet the ends of justice, and relieve undue prejudice

Respectfully submitted.



Earl Reyes, Petitioner, Pro Se

Auburn Correctional Facility, P.O. Box 618, Auburn, NY 13024