No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Adrian Rangel – PETITIONER

vs.

Tippecanoe County, IN. et al – RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIRORAI

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QUESTION PRESENTED

Question

Did the United States Court of Appeals for the Seventh and the Hammond Indiana Federal Trial Court err in dismissing Petitioner's Complaint based solely on Defendants' contended absolute immunity ?

LIST OF PARTIES

[x] All parties appear in the caption of this case on the cover page.

TABLE OF CONTENTS

INDEX TO CONSOLIDATED APPENDICES

TABLE OF AUTHORITIES CITED

SUPREME COURT CASES

STATUTES AND RULES

1) Federal Rules of Civil Procedure, Rule 38. Right to a Jury Trial; Demand RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate
2) Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the *affidavits*, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."
3) Rule 56(e)'s provision that a party opposing a properly supported motion for summary judgment " `may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial "

4) Rule 56(c) "[i]t is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to 249*249 trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial."

5) UNITED STATES SUPREME COURT RULE 24: Briefs on the Merits: In General. " At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide."

6) Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the *pleadings*, depositions, answers to interrogatories, and admissions on file, together with the *affidavits*, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

7) Federal Rule of Civil Procedure 8 (c) (defendant must plead any matter constituting an affirmative defense)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix __A_____ to the petition and is not reported as of yet per clerk's office.

The opinion of the United States District Court appears at Appendix __B____ to the petition and is not reported as of yet per clerk's office.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was

_____October 22, 2018_____.

[x] No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C.&1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment

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 or 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.....pp. 12-20

Seventh Amendment (trial by jury)

"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 a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law"..... p. 11

STATEMENT OF CASE

Petitioner's complaint is against institutions: Tippecanoe County, IN (Steven Meyers, County Judge, IV Commissioner Matthew Boulac), anonymous female Prosecutor with the State of Indiana and Indiana Governor and Supervisor Eric Holcomb heretofore mentioned as Defendants. All 3 have directly or indirectly arbitrarily increased Petitioner's past due child support from under $8000.00 to over $32,000.00 in one year.

Petitioner contends that the increase was arbitrary because despite Petitioner having filed a Motion for Findings of Fact and Conclusions of Law, his Motion for Findings of Fact and Conclusions of Law along with 18 subsequent Motions were ignored creating a County/State Trial Court record of systematic constitutional violations of Petitioner's due process as well as substantive due process rights. (APPENDIX C)

Petitioner contends that the Defendants strategically targeted Petitioner along with other minorities and poor people because of their inability to pay or hire effective legal counsel. (APPENDIX D)

Petitioner is a recently homeless Mexican-American veteran. In addition, Defendants have access to Petitioner's brown skinned picture on file since Petitioner was previously jailed at the Tippecanoe County, IN Jail on a domestic violence for which Petitioner obtained a deferral and eventual Nolo Prosecutor.

In addition, Petitioner contends that a surface search of outstanding warrants in Tippecanoe County, Indiana as compared to other counties around the United States indicates a terrifying abuse of the warrant system by the Defendants. Especially when one compares the population of Tippecanoe County against other counties.

Petitioner appealed the above Defendants' decisions twice to the Indiana Court of Appeals; case 18-A-DR-01432 and case 79A02-1709-DR-02073. Petitioner contends that Petitioner was given the run around by the Indiana Court of Appeals. Both Indiana State Court Appeals went nowhere because the trial court took over a year to prepare the record twice and because the Petitioner failed to properly paginate the Filings to the Appeals Court. (APPENDIX E) (APPENDIX F) (APPENDIX H)

On Nov. 7, 2018 there was yet another telephonic hearing under threat of incarceration for the Petitioner. The strain of potentially losing his freedom took a tremendous emotional and mental toll on Petitioner's ability to function as a human being; tremendously increasing Petitioner's forgetfulness, focus, and physical balance among other things. (APPENDIX G)

Moreover, the child support is supposedly due on a son who Petitioner has only seen 3 times in the last 16 years. Supposedly, the now 22 year old man, is on disability. Petitioner has never seen any proof of the child, now man, being on disability nor has Petitioner been given such proof despite repeated requests in the form of Motions filed with the Defendants. Defendants appeared to have a one track mind which was to turn Petitioner's life into a living hell without the benefit of due process or substantive due process or trial by jury, hiding and dismissing case after appeal

after case after appeal under immunity from the Defendants' trial Courts on up thru the United States Court of Appeals for the Seventh Circuit. (APPENDIX I)

Petitioner filed a federal civil rights complaint against all the Defendants with the Hammond Indiana Federal District Court, case 2:18cv131 which was also dismissed for immunity despite a jury trial being requested. Petitioner contends that Federal District Court Judge Joseph S. Van Bokkelan should have recused himself having previously worked in the Indiana Attorney General's Office. Petitioner subsequently filed an appeal with the U.S. Seventh Circuit Court of Appeals, case 18-2846. The United States Seventh Circuit promptly affirmed the District Court's Decision for Defendants' absolute immunity without substantive due process or due process review.

Petitioner contends that Hammond, Indiana Federal District Court Judge Joseph S. Van Bokkelan erred in completely ignoring all the documents filed in the County Trial Court record. Petitioner continues to contend that Petitioner did not receive due process or substantive due process from the Defendants through their kangaroo court system. Petitioner contends that both the Federal Trial Court and Federal Appeals Court erred in dismissing his Petitions due to Defendants alleged immunity ignoring a trial by jury request.

According to FRCA 8(c) it was the Defendants' responsibility not the Federal Trial Court Judge's responsibility to plead absolute immunity; eventually ruling for the Defendants and arbitrarily dismissing Petitioner's complaint.

REASONS FOR GRANTING THE PETITION

Question

Did the United States Court of Appeals for the Seventh and the Hammond Indiana Federal Trial Court err in dismissing Petitioner's Complaint based solely on Defendants' contended absolute immunity ?

The Federal Trial Court erred in dismissing Peitioner's case based solely on a finding of the Defendants' absolute immunity before Defendants ever pleaded absolute immunity at the Federal Trail Court level. The United States Seventh Circuit Court of Appeals also erred in affirming the Federal Trial Courts dismissal based solely on absolute immunity. Petitioner's statement is supported by excerpts from the following cases:

' " As we reiterated today in Nixon v. Fitzgerald, ante, p. 731, our decisions consistently have held that government officials are entitled to some form of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability.

807*807 Our decisions have recognized immunity defenses of two kinds. For officials whose special functions or constitutional status requires complete protection from suit, we have recognized the defense of "absolute immunity." The absolute immunity of legislators, in their legislative functions, see, e. g., Eastland v. United States Servicemen's Fund, 421 U. S. 491 (1975), and of judges, in their judicial functions, see, e. g., Stump v. Sparkman,435 U. S. 349 (1978), now is well settled. Our decisions also have extended absolute immunity to certain officials of the Executive Branch. These include prosecutors and similar officials, see Butz v.

Economou, 438 U. S. 478, 508-512 (1978), executive officers engaged in adjudicative functions, id., at 513-517, and the President of the United States, see Nixon v. Fitzgerald, ante, p. 731.

Petitioners argue that they are entitled to a blanket protection of absolute immunity as an incident of their offices as Presidential aides. In deciding this claim we do not write on an empty page. In Butz v. Economou, supra, the Secretary of Agriculture — a Cabinet official directly accountable to the President — asserted a defense of absolute official immunity from suit for civil damages. We rejected his claim. In so doing we did not question the power or the importance of the Secretary's office. Nor did we doubt the importance to the 809*809 President of loyal and efficient subordinates in executing his duties of office. Yet we found these factors, alone, to be insufficient to justify absolute immunity. "[T]he greater power of [high] officials," we reasoned, "affords a greater potential for a regime of lawless conduct." 438 U. S., at 506. Damages actions against high officials were therefore "an important means of vindicating constitutional guarantees." Ibid. Moreover, we concluded that it would be "untenable to draw a distinction for purposes of immunity law between suits brought against state officials under [42 U. S. C.] § 1983 and suits brought directly under the Constitution against federal officials." Id., at 504.

Petitioners contend that the rationale of Gravel mandates a similar "derivative" immunity for the chief aides of the President of the United States. Emphasizing that the President must delegate a large measure of authority to execute the duties of his office, they argue that recognition of derivative absolute immunity is made essential by all the considerations that support absolute immunity for the President himself.

Petitioners' argument is not without force. Ultimately, however, it sweeps too far. If the President's aides are derivatively immune because they are essential to the functioning of the

Presidency, so should the Members of the Cabinet — Presidential subordinates some of whose essential roles are acknowledged by the Constitution itself[13] — be absolutely immune. Yet we implicitly rejected such derivative immunity in Butz.[14]Moreover, in general our cases have followed a "functional" approach to immunity law. We have recognized 811*811 that the judicial, prosecutorial, and legislative functions require absolute immunity. But this protection has extended no further than its justification would warrant. In Gravel, for example, we emphasized that Senators and their aides were absolutely immune only when performing "acts legislative in nature," and not when taking other acts even "in their official capacity." 408 U. S., at 625. See Hutchinson v. Proxmire, 443 U. S. 111, 125-133 (1979). Our cases involving judges[15] and prosecutors[16] have followed a similar line. The undifferentiated extension of absolute "derivative" immunity to the President's aides therefore could not be reconciled with the "functional" approach that has characterized the immunity decisions of this Court, indeed including Gravel itself.[17]

Butz also identifies the location of the burden of proof. The burden of justifying absolute immunity rests on the official asserting the claim. 438 U. S., at 506. We have not of course had occasion to identify how a Presidential aide might carry this burden. But the general requisites are familiar in our cases. In order to establish entitlement to absolute immunity 813*813 a Presidential aide first must show that the responsibilities of his office embraced a function so sensitive as to require a total shield from liability.[20] He then must demonstrate that he was discharging the protected function when performing the act for which liability is asserted.[21]

Applying these standards to the claims advanced by petitioners Harlow and Butterfield, we cannot conclude on the record before us that either has shown that "public policy requires [for any of the functions of his office] an exemption of [absolute] scope." Butz,438 U. S., at 506.

Nor, assuming that petitioners did have functions for which absolute immunity would be warranted, could we now conclude that the acts charged in this lawsuit — if taken at all — would lie within the protected area. We do not, however, foreclose the possibility that petitioners, on remand, could satisfy the standards properly applicable to their claims.

The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. 814*814 In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees. Butz v. Economou, supra, at 506; see Bivens v. Six Unknown Fed. Narcotics Agents,403 U. S., at 410 ("For people in Bivens' shoes, it is damages or nothing"). It is this recognition that has required the denial of absolute immunity to most public officers. At the same time, however, it cannot be disputed seriously that claims frequently run against the innocent as well as the guilty — at a cost not only to the defendant officials, but to society as a whole.[22] These social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will "dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties." Gregoire v. Biddle, 177 F. 2d 579, 581 (CA2 1949), cert. denied, 339 U. S. 949 (1950).

In identifying qualified immunity as the best attainable accommodation of competing values, in Butz, supra, at 507-508, as in Scheuer, 416 U. S., at 245-248, we relied on the assumption that this standard would permit "[i]nsubstantial lawsuits [to] be quickly terminated." 438 U. S., at 507-508; see Hanrahan v. Hampton, 446 U. S. 754, 765 (1980) (POWELL, J., concurring in part and dissenting in part).[23] Yet petitioners advance persuasive arguments that the dismissal of insubstantial lawsuits without trial — a factor presupposed in the balance of competing interests

struck by 815*815 our prior cases — requires an adjustment of the "good faith" standard established by our decisions.

Qualified or "good faith" immunity is an affirmative defense that must be pleaded by a defendant official. Gomez v. Toledo, 446 U. S. 635 (1980).[24] Decisions of this Court have established that the "good faith" defense has both an "objective" and a "subjective" aspect. The objective element involves a presumptive knowledge of and respect for "basic, unquestioned constitutional rights." Wood v. Strickland, 420 U. S. 308, 322 (1975).The subjective component refers to "permissible intentions." Ibid. Characteristically the Court has defined these elements by identifying the circumstances in which qualified immunity would not be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury . . . ." Ibid. (emphasis added).[25] ‘

Harlow v. Fitzgerald, 457 US 800 - Supreme Court 1982

‘ Section 1983 provides a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." 42 U. S. C. § 1983.[6] This statute, enacted to aid in "`the preservation of human liberty and human rights,'" Owen v. City of Independence, 445 U. S. 622, 636 (1980), quoting Cong. Globe, 42d Cong., 1st Sess., App. 68 639*639 (1871) (Rep. Shellabarger), reflects a congressional judgment that a "damages

remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees," 445 U. S., at 651. As remedial legislation, § 1983 is to be construed generously to further its primary purpose. See 445 U. S., at 636.

In certain limited circumstances, we have held that public officers are entitled to a qualified immunity from damages liability under § 1983. This conclusion has been based on an unwillingness to infer from legislative silence a congressional intention to abrogate immunities that were both "well established at common law" and "compatible with the purposes of the Civil Rights Act." 445 U. S., at 638. Findings of immunity have thus been "predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." Imbler v. Pachtman, 424 U. S. 409, 421 (1976). In Pierson v. Ray, 386 U. S. 547, 555 (1967), for example, we concluded that a police officer would be "excus[ed] from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied." And in other contexts we have held, on the basis of "[c]ommon-law tradition. . . and strong public-policy reasons," Wood v. Strickland, 420 U. S. 308, 318 (1975), that certain categories of executive officers should be allowed qualified immunity from liability for acts done on the basis of an objectively reasonable belief that those acts were lawful. See Procunier v. Navarette, 434 U. S. 555 (1978)(prison officials); O'Connor v. Donaldson, 422 U. S. 563 (1975) (superintendent of state hospital); Wood v. Strickland, supra (local school board members); Scheuer v. Rhodes,416 U. S. 232 (1974) (state Governor and other executive officers). Cf. Owen v. City of Independence, supra (no qualified immunity for municipalities).

Nothing in the language or legislative history of § 1983, 640*640 however, suggests that in an action brought against a public official whose position might entitle him to immunity if he acted

in good faith, a plaintiff must allege bad faith in order to state a claim for relief. By the plain terms of § 1983, two—and only two—allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law. See Monroe v. Pape, 365 U. S. 167, 171 (1961). Petitioner has made both of the required allegations. He alleged that his discharge by respondent violated his right to procedural due process, see Board of Regents v. Roth, 408 U. S. 564 (1972), and that respondent acted under color of Puerto Rican law. See Monroe v. Pape, supra, at 172-187.[7]

Moreover, this Court has never indicated that qualified immunity is relevant to the existence of the plaintiff's cause of action; instead we have described it as a defense available to the official in question. See Procunier v. Navarette, supra, at 562; Pierson v. Ray, supra, at 556, 557; Butz v. Economou, 438 U. S. 478, 508 (1978). Since qualified immunity is a defense, the burden of pleading it rests with the defendant. See Fed. Rule Civ. Proc. 8 (c) (defendant must plead any "matter constituting an avoidance or affirmative defense"); 5 C. Wright & A. Miller, Federal Practice and Procedure § 1271 (1969). It is for the official to claim that his conduct was justified by an objectively reasonable belief that it was lawful. We see no basis for imposing on the plaintiff an obligation to anticipate such a defense by stating in his complaint that the defendant acted in bad faith.

Our conclusion as to the allocation of the burden of pleading is supported by the nature of the qualified immunity 641*641 defense. As our decisions make clear, whether such immunity has been established depends on facts peculiarly within the knowledge and control of the defendant. Thus we have stated that "[i]t is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for

qualified immunity of executive officers for acts performed in the course of official conduct." Scheuer v. Rhodes, supra, at 247-248. The applicable test focuses not only on whether the official has an objectively reasonable basis for that belief, but also on whether "[t]he official himself [is] acting sincerely and with a belief that he is doing right," Wood v. Strickland, supra, at 321. There may be no way for a plaintiff to know in advance whether the official has such a belief or, indeed, whether he will even claim that he does. The existence of a subjective belief will frequently turn on factors which a plaintiff cannot reasonably be expected to know. For example, the official's belief may be based on state or local law, advice of counsel, administrative practice, or some other factor of which the official alone is aware. To impose the pleading burden on the plaintiff would ignore this elementary fact and be contrary to the established practice in analogous areas of the law.[8] 642*642 '

Gomez v. Toledo, 446 US 635 - Supreme Court 1980

None of Petitioner's Motions for Interrogatories were reviewed by the County Trial Court as evidenced by the record. Petitioner thusly contends that his substantive due process rights and due process rights were violated which is supported by the following case finding:

' The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. Mr. Justice Black, writing for the Court in In re Oliver, 333 U. S. 257, 273 (1948), identified these rights as among the minimum essentials of a fair trial:

"A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." '

Chambers v. Mississippi, 410 US 284 - Supreme Court 1973

Petitioner contends that his Motion for the State/County IV Commissioner Matthew Boulac to Recuse based on his biased in session statement favoring the State was ignored hindering an impartial hearing and violating Petitioner's rights to due process and substantive due process supported by the following case finding:

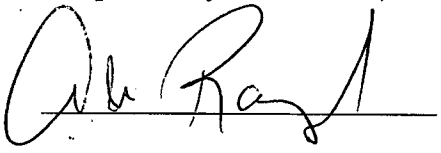
" Moreover, in each case the decision maker must be impartial, there must be some record of the proceedings, and the decisionmaker's conclusions must be set forth in written form indicating both the evidence and the reasons relied upon. Because the Due Process Clause requires these procedures, I agree that the case must be remanded as the Court orders. "

Morrissey v. Brewer, 408 US 471 - Supreme Court 1972

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 15, 2019

PROOF OF SERVICE

I, Adrian G. Rangel, do swear or declare that on this date, January 15, 2019, as required by the Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO FILE IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIRARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid, or by delivery to a third -party commercial carrier for delivery within 3 calender days.

The names and addresses of those served are as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 15, 2019
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