IN THE

Supreme Court of United States

FARZANA SHEIKH M.D., AND REHAN SHEIKH
Petitioners,

v.

SAN JOAQUIN GENERAL HOSPITAL
Respondent

On Writ of Certiorari
To the United States Court of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

A federal court's "obligation" to hear and decide a case that implicates Constitutional and Civil Rights is "virtually unflagging". Parallel state-court proceedings do not detract from that obligation; Sprint Communications, Inc. v. Jacobs, 571 US 69 (2013)

Petitioners removed an action to the district court seeking injunctive and declaratory reliefs. Without even a cursory hearing, without any opposition by the defendants, the district court dismissed the action and wrote "the federal action shall be closed".

Furthermore, the Eastern District of California denies Article III standing to petitioners and to a class of individuals, in all actions including federal Civil Rights, via its Local Rule 302(c)(21); All matters including dispositive are referred to Magistrates even when consent is declined in writing.

1. Whether Local Rule 302 (c) (21) of Eastern District of California conforms with 28 U.S.C. § 636 and conforms with Article III Jurisprudence?
2. Alternatively, whether the district court has an obligation to hear the case?

LIST OF PARTIES

The parties to the judgment are;

Respondent;
San Joaquin General Hospital is a division of County of San Joaquin, California.

Respondent(s), in the previous actions, included;
State of California

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully request this court to issue a Writ of Certiorari to review the Orders and Memorandum of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit's order dated Jan 22, 2018 and order denying Petition for En banc hearing treating as Motion for Reconsideration dated May 23, 2018 are included as (Appendix A). The Ninth Circuit order terminating appeal for lack of Jurisdiction is included as (Appendix C). The Ninth Circuit's Memorandum on authority of Magistrate is included as (Appendix D).

On Sep 26, 2018 the Chief Justice granted application to extend time to file the Petition (18A 223).

JURISDICTION

The district court had Jurisdiction over this matter under 42 U.S.C. § 1983, 18 U.S.C. § 241, 18 U.S.C. § 242, 28 U.S.C. § 1331 and 28 U.S.C. § 1443.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Article III, § 1 of the Constitution provides:
The judicial power of the United States, shall be

vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Local Rule 302 (c) (21) In Sacramento, all actions in which all the plaintiffs or defendants are proceeding in *propria persona*, including dispositive and non-dispositive motions and matters. Actions initially assigned to a Magistrate Judge under this paragraph shall be referred back to the assigned Judge if a party appearing in *propria persona* is later represented by an attorney appearing in accordance with L.R. 180.

28 U.S.C. § 636
(b) (1)
(A) a judge may designate a Magistrate Judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, ... to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.
(c) (1) Upon the consent of the parties, a full-time United States Magistrate Judge or a part-time United States Magistrate Judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves.

SUMMARY OF ARGUMENTS

This Court is requested to restore the Right to hearing before Article III Judges and to vacate the orders issued by Magistrates without consent.

INTRODUCTION

A critical limitation on this expanded jurisdiction is consent. *Gomez v. United States*, 490 US 858 (1989). "Federal magistrate judges "are creatures of statute." *NLRB v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1415 (9th Cir. 1994).

> "The Federal Magistrates Act, 28 U.S.C. § 636, defines the scope of a magistrate judge's authority, imposing jurisdictional limitations on the power of magistrate judges that cannot be augmented by the courts. See A-Plus Roofing, Inc., 39 F.3d at 1415; cf. *United States v. Krueger*, 809 F.3d 1109, 1122 (10th Cir. 2015) (Gorsuch, J., concurring)" *USA v. Bryan Henderson* - 17-10230 (9th Cir. 2018).

Can the authority of the Magistrates be augmented by local rules, by a letter from California Attorney General or by the Ninth Circuit. The Ninth Circuit's Memo stated [Appendix D], "Sheikh's remaining contentions, including those concerning the authority of the magistrate judge, are unpersuasive" (without making an inquiry into consent). In that matter, petitioners had declined consent to the Jurisdiction of Magistrate in writing more than once before the Magistrate issued an order; citing record that the hospital and the attorney general had not even disclosed to petitioners.

"It was thus concern about the possibility of coercive referrals that prompted Congress to make it

clear that "the voluntary consent of the parties is required before a civil action may be referred to a magistrate." Roell v. Withrow, 538 U.S. 580 (2003). The district court action was initiated on June 6, 2017 and, though consent was declined, on June 8th the Magistrate issued Recommendations to dismiss the action without a hearing. The district judge, without hearing wrote, "The Court has reviewed the file" but docket shows no records were requested from any of the cases mentioned in the Recommendations. The typical Order of the district judge to dismiss the action had Local Rule 302 (c) (21) in first paragraph and a keyword "Accordingly. (Append E)

> "The right to a hearing on the merits of a claim over which the court has jurisdiction is of the essence of our judicial system" and the judge's [feeling ....] does not justify by-passing that right. Appellant is entitled to have process issued and served, and to be heard". *Harmon v. Superior Court* 307 F.2d 796 (9th Cir. 1962).

"The district court had no jurisdiction to dismiss the case .... without hearing the plaintiffs and the plaintiffs were not heard on the issue". *Gutensohn V. Kansas City Southern Ry. Co.* 140 F.2d 950 (8th Cir. 1944)

Only in the footnote of the Recommendations the Magistrate mentioned, two of the three previous cases involving the hospital, deprivation of license and of home; both without hearing, the contested Local Rules and the authority of the Magistrates. Additionally because of its earlier rulings, the federal court has retained exclusive Jurisdiction over this matter. It is unworkable to have two courts review the case. It is best to have one court adjudicating Rights. *United States v Alpine Land Reservoir Co*, 174 F.3d 1007 (1999). The action(s) involved Civil

Rights Jurisdiction but federal courts denied hearing. The previous three actions were dismissed by Court of Appeals without any pleading even filed by the hospital. In a prior action, the attorney general filed letters and briefs mentioning the Local Rules, authority of Magistrate and Article III standing.

This case represents another malicious action that the County hospital initiated in the county court seeking court's permission to enter and to take possession of petitioners' home. The county hospital has multiple cases in the county court, regarding same home, to manage their evolving theories of eviction and abandonment. In this Notice of Removal, in addition to contesting Local Rules, the district court was requested to grant an injunctive relief mandating the county Sheriff to have an order signed by a judge before lawfully depriving or lawfully evicting someone of their homes; and to declare the hospital's county court action as a malicious action. "The risk that the state courts will not promptly dismiss the prosecutions was the congressional fear". City of Greenwood v Peacock, 384 US 808 (1966).

In 2010 the home was taken by County sheriff and hospital without any hearing in any court. In 2014, their stated reason was,

> "These documents required you to vacate the County property. At no time has the County ever occupied Dr. Sheikh's mobile home." "Dr. Sheikh's ability to practice her profession is not a matter that can be addressed by the County and is not the matter under consideration with the court." Letter from the hospital (June 24, 2014)

During 2007-2009, Petitioner Dr. Sheikh received various letters and emails from the hospital and the licensing Board, denying Physician License and

terminating Medical Residency, with varying statements. Despite numerous requests, no hearing has been scheduled until now. Even in federal court, 'their' alleged reasons for denying hearing have varied. e.g. in 2010, the Attorney General's wrote that 'those letters and emails are not on file with an agency'. (Sep 30, 2010 Dkt#87). The Article III Judge vacated the hearing.

Article III, § 1, serves to protect "the role of the independent judiciary within the constitutional scheme of tripartite government," *Thomas v Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985) at 583. "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." United States v. Will, 449 US 200 (1980) but Petitioners and a class of individuals are referred to Magistrates.

The Magistrates rule all matters without evidentiary hearing or briefing schedule, and without the benefit of trial; for example, matters of state law question, and Constitutionality of state statues, the challenge to procedural Due Process. The title of dispositive findings of Magistrates have varied from Order, "Orders and Findings and Recommendations" or mere Recommendations" but results were same, they are summarily adopted without hearing without even retyping via a perceived de novo review. In *Executive Benefit Ins. v Arkison*,134 S.Ct. 2165 (2014) this court cited the fundamentals of de novo review "District Court conducted *de novo* review of the summary judgment claims, concluding in a written opinion that there were no disputed issues of material fact" and "made an independent and

complete review of the conflicting evidence"). A cursory review of the orders of Article III judges shows a document without substance or facts.

Whether the Ninth Circuit can review orders of Magistrate, is another important matter. California's answering brief limited the scope of Ninth Circuit review and stated "This court is limited to a review of the district court's decision" (excluding review of Magistrate's order, excluding Petitioner's Request(s) for Admission, evidence etc) (Dkt#27-1- CA9;10-17098). The brief also stated P39, "[Dr. Sheikh] therefore lacks standing to bring this challenge". In other unrelated matters, the Ninth Circuit vacated orders of Magistrates entered without consent but in this litigation it did not improperly denying remedy.

The Ninth Circuit acknowledged its arbitrary and inconsistent approach on dispositive orders of Magistrates, "Our precedent paints no clear picture on the appropriate remedy and presents a range of options to address the magistrate judge's invalid judgment." *Allen v Meyers*, 755 F.3d 866 (9th. Cir. 2014).

The Ninth Circuit also acknowledged the deficiency caused by its arbitrary action on dispositive orders of Magistrates. "We are concerned that simply dismissing the appeal for lack of jurisdiction provides no remedy at all. Doing so would potentially deprive [petitioners] a chance to appeal the underlying merits and would leave intact the void judgment." Allen v Meyers, 755 F.3d 866 (9th. Cir. 2014). This is another matter that deserves this Court's intervention.

BACKGROUND

The Eastern District of California denies hearing before Article III Judges via its Local Rules. Additionally, the ex-parte letters from the Attorney General and the County Counsel contributed towards denying fair hearing.

a. The Deprivation of home without hearing

"A man's house is his castle; even though the winds of heaven may blow through it, the king of England cannot enter it" but that is just another principle lost in the County. Petitioners initiated an action in Eastern District of California and filed Motion(s) to Compel (discovery) (Dkt#23 -Mar 19, 2010 - #33 -Apr 8). In response, the County hospital via sheriff 'occupied' Petitioners home[1], changed locks without any hearing without any Judge's order. After the Ninth Circuit dismissed the matter the county counsel informed that the hospital eventually destroyed the home (See 18A223).

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to

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[1] A block away from the main building of the hospital, there are approx 16 or more cottages owned by hospital and rented to Medical Residents according to a rental agreement. On the same row and the next, there are six or more cottages (homes) owned by the Medical Residents. There is also a written contract between the hospital and owner residents. The county assessed taxes. The Magistrates' order mentioned home as trailer or mobile home, neither home is on wheels nor its mobile; the home was built or installed at that location since 1986.

the nature of the case. Mullane, Special Guardian, v. Central Hanover Bank & Trust Co., Trustee, et al. 339 U.S. 306 (1950).

This Court has held that "the seizure and removal of [home] implicated petitioners' Fourth Amendment Rights". *Soldal v. Cook County, Illinois, et al.* 506 U. S. 56 (1992) The guarantee against unreasonable searches and seizures contained in the Fourth Amendment has been made applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment. *Monroe v. Pape*, 365 US 167 (1961) (quoting Wolf v Colorado, 338 U.S. 25, Elkins v United States 364 U.S. 206, 213). "A lawful taking would not give rise to a violation of 18 U.S.C. § 242, a criminal statute that uses language paralleling Section 1983 to make it a misdemeanor to "willfully" subject a person to a deprivation of constitutional rights." Knicks v Township of Scott (17-647)- Brief of the United States (P34). The Tidwell Court addressed retaliation by a County towards licensed healthcare professionals. "A person commits the offense of retaliation if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation". *Scott Tidwell v. State*, 08-11-00322-CR (Tex. App. 2013)

The county Sheriff, however, 'presented' an unsigned eviction Order EJ-130 stamped by county court clerk, a court that had not held any hearing, and an additional notice stamped by sheriff. Those were filed in district court and remains without hearing (Dkt 45-6, 2:10-cv213- May 14, 2010). The first page of that order stated, Writ of Possession of Real Property. As "they" have privileged access to their county court, (in 2014) in lieu of the above referenced form, the county counsel sent another form that is now signed by a deputy court clerk and

by sheriff. Those were also filed in the district court along with Notice of Removal in June 2014 (Dkt 1-1 2:14-cv-1509 - 2014).

Has California assigned its Court Clerks to resolve legal disputes involving property ownership or eviction? And to resolve without any hearing? *Knicks v Township of Scott* (17-647) - California filed an amicus brief dated Aug 6, 2018; and in that brief, California did not even mention the keyword "Court Clerk" nor stated that court clerk(s) are authorized to make legal determination on property matters. In that brief California used keyword Judge three times in the following sentences; "That allows the judge **to** determine whether the "application of the ordinance or regulation to the property is statutorily permissible." (P10) "If a judge rules that a regulatory action effects a taking, then the government has an opportunity to rescind its action or choose not to apply it. (P12) "And even where a violation of state law is pleaded and would provide a basis to invalidate or modify a regulatory action, federal judges could choose to decide federal constitutional claims first or to decline jurisdiction over the state-law claims entirely. *See* 28 U.S.C. § 1367(c)". Nowhere in California's Brief, has the state claimed that their court clerks are authorized to resolved such legal questions of law (property ownership or eviction) without a Judge.

In 2014 the County Counsel sent pictures of interior and exterior of home that was damaged. The county counsel wrote that Petitioner are the owners and sent notices of tax assessment. The County Counsel was requested to preserve the evidence of damage to the home so that loss can be assessed. The County changed the previous theory of eviction, and

now claimed that the home was abandoned and initiated a Petition of abandonment.

b. The Magistrate's order of resolving state law question of eviction

The hospital's action was removed to the District Court in June 2014 [First Removal] No. 2:14-cv-1509 MCE AC]. Regarding Civil Rights Jurisdiction, the Magistrate mentioned that Civil Rights is defense. [Transcript, Sep 10, 2014]. The ninth circuit mentioned subject matter jurisdiction (Append C).

DR. SHEIKH: Your Honor, my licensing issue was with this -- with this Court, and I requested documents from the hospital, the county hospital of San Joaquin so that I could present my defense, and defend myself to get my license. And all this eviction and possession of the property started right after that. Since my documents are with the Court, it will be much easier for the Court to like, you know, to discuss, because of the relevance of the current situation with what happened in the past. [P4]

THE COURT: These look to me to be the same bases for removal that were previously stated, which is the relationship of this case with your previous case against the medical board, the fact that you think the San Joaquin County Superior Court might be biased because of the county's -- what you call their privileged access, the amount in controversy, the relationship of your benefit check to your claim of ERISA preemption, the value of the mobile home, and the fact that you think your constitutional and civil rights are implicated. [P11]

THE COURT: All right. Dr. Sheikh, do you

understand that your belief, even if you are correct that the hospital's action against you somehow violates your civil rights is a defense? That would be your defense, and that a defense to a lawsuit is not a basis for federal jurisdiction. [P8]

THE COURT:-- But the only question here is whether it's proper for this Court to handle the hospital's petition against you to try to get the trailer moved, and that's not something that federal courts really have any right adjudicating. That is up to you and the hospital under state law. It's not the federal government's business to interfere in those kind of state law property matters. [P10]

The Magistrate's Order and Finding and Recommendations dated Sep 12, 2014 (Dkt #19); wrote; "[Petitioner] was evicted in May 2010". ECF No. 4-3 at 2." ECF No. 4-3 are not records from any other court but is a statement of an administrative employee of the hospital. The order also stated, "According to plaintiff [hospital], the terms of the lease agreement between plaintiff [hospital] and defendant" but there is no other court that has resolved such contractual dispute. As a result, the police action in 2010 was labeled as eviction by a Magistrate in 2014.

The Ninth Circuit terminated the appeal even before the briefs were filed without vacating the order. Before the appeal, petitioners submitted detailed 13 page jurisdictional arguments, with 2 page exhibits, requested Jurisdictional discovery and hearing on Sep 29 (Dkt #19). In brief opposition, the county counsel, without any factual or legal details, wrote; the county "requests that the Court enter an

order adopting the Order and Findings and Recommendations" [Appendix F].

The district Judge Morrison England adopted the order without hearing. The typical Order of the district judge had Local Rule 302 (c) (21) in first paragraph and a keyword "Accordingly" without stating any law or facts but also stated "the Court has conducted a de novo review".

Eviction: The act or process of legally dispossessing a person of land or rental property. See Forcible entery and Detainer. Retaliatory Eviction. An eviction – nearly always illegal – commenced in response to a tenant's complaints or involvement in activities with which landlord does not agree. BLACK'S LAW DICTIONARY (Second Pocket ed. 2001) at 249

"The Magistrate's [order] to [exclude all historical background], evidence [of civil rights violations and unsigned orders] of [Petitioners] alleged abuse at the hands of [San Joaquin General Hospital], and to disregard this evidence in its entirety, was error. Because this erroneous evidentiary ruling violated [Petitioner's] due process right to present a complete defense" "An evidentiary error violates a defendant's due process rights when it excludes: "(1) the main piece of evidence, (2) for the defendant's main defense, to (3) a critical element of the government's case." US v Haischer, 780 F.3d 1277 (9th, Cir. 2015) quoting United States v Evans, 728 F.3d 953 (9th, Cir. 2013).

c. The ex-parte letter(s) from the Attorney General contributed to Prejudice

The Attorney General and the hospital's Counsel wrote numerous personal letter(s), in lieu of legal Motions, to Magistrates, Judges and Court Clerks

(see Application to Chief Justice- 18A223 – Exhibit 3). Some of those ex-parte letters also appeared on district court dockets and as a result the matters were resolved for the county and state prosecutors without hearing. e.g. On March 24, 2017, the county counsel wrote a letter that stated,

> "The purpose of that letter was in an attempt to have the USDC, Eastern district take some action which would allow [SJGH -the county hospital] to be able to eventually extract itself from the above mentioned case, in which it never identified as a party to the action, in any meaningful way"

Only once in response to such letters by the County Counsel, a district Judge took notice [(Dkt #15) Apr 12, 2017] and wrote.

> "MINUTE ORDER issued by Courtroom Deputy M. Krueger for District Judge Troy L. Nunley on 4/12/2017: The Court is in receipt of a letter sent to Chief Judge O'Neill regarding this action (ECF No. 13). Such communication is improper. "A request for a court order must be made by motion." Fed. R. Civ. P. 7(b)(1)"

Nonetheless, as a result of the above referenced letter, name of the hospital disappeared from and the federal court action, without hearing, was remanded to state court by a judge who was not even assigned to that case. The Ninth Circuit arbitrarily denied Motion to correct court docket. [Appendix B].

In another matter, the Attorney General did not present any opposition to petitioners Request(s) for admission but wrote a letter that the request will not be admitted. The lower Court(s) denied hearing. The letters contributed to prejudice and denied trial or a fair trial. This is a major deficiency and this court's intervention is needed.

REASONS FOR GRANTING THIS PETITION

I. Right to hearing on merits of claim is essence of our Judicial System

"The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England". *Armstrong v. Exceptional Child Center, Inc. et al*, 135 S.Ct. 1378 (2015) quoting Jaffe & Henderson, Judicial Review and the Rule of Law: Historical Origins, 72 L.Q. Rev. 345 (1956)

"Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." Monroe v. Pape, 365 US 167 (1961)

The Court of Appeals did not consider Rights or parties involved or the amount in controversy. "It has been said [that] 18 U. S. C. § 241 made criminal a conspiracy "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution," and "[It] authorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doer in the Federal courts, and that without any limit whatsoever as to the amount in controversy." Monroe v. Pape, 365 US 167 (1961) quoting Senator [of] Ohio

28 U.S.C. § 1343 (a) states, the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:" The examples of cases that can be addressed include,

"First is the case of prosecution under a law which is valid on its face but applied discriminatorily. Second is a prosecution under, say, a trespass law for conduct which is privileged under federal law. Third is an unwarranted charge brought against a civil rights worker to intimidate him for asserting those rights or to suppress or discourage their promotion." *City of Greenwood v Peacock*, 384 US 808 (1966)

II. The Local Rule is without Rationale and impacts less affluent people

The Eastern district of California is ranked among the largest districts in the country. The Jurisdiction of the district Court includes Central valley of California and also extends from Sacramento to the border of Oregon. The average Americans living in the Central valley are considered comparatively less affluent (low income, high poverty) due to given set of socioeconomic circumstances. The only means of access to Article III Judges is the Eastern District of California.

The Local Rule imposes an unbearable burden on less affluent people mandating them to pay to retain services of a counsel as a pre-condition to getting a hearing before an Article III Judge. "[T]he Equal Protection Clause `imposes a requirement of some rationality in the nature of the class singled out'. Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) quoting James v. Strange 407 U.S. 128 (1972)

The Petitioner was a pro se in Northern district of California where court hearing, phone hearings and conferences, were properly held before an Article III Judge.

> "Well, can... can local rules in one district produce a different result than another district

> which didn't have that local review with respect to this sort of consent?" inquired Justice Rehnquist. The answer was, "Absolutely not, Mr. Chief Justice". "In this circumstances, certainly that authority emanates from the statue itself, and a local rule can't determine the authority of the Magistrate judge" (Oral Arguments @4:45 *Roell v Withrow*).

The Eastern District's Local Rules violated Petitioners' Right to Equal Protection and allowed, on the basis of undisclosed *ex parte* letters, the Respondents a public hospital, to effect a taking of Rights and real property from the Petitioners in violation of the due process rights guaranteed by the Constitution and this Court.

If lack of attorney is a good cause for denying hearing before Article III Judges, there are number of other solutions and resources already available to the courts and to the attorney general. The Local Rules does not consider that the people may not be able to secure representation for a number of legitimate reasons such as lack of suitable attorneys or poverty. Such distinction among poor and rich by the courts does not conform 28 U.S.C. § 453 .... I will administer justice without respect to persons, and do equal right to the poor and to the rich.

a. The Local Rule fails this Court's inquiry in *Viosine*

The reach of the Local Rules that bar people from Access to Article III judges cannot withstand any rational test. If oral arguments in *Voisine* are an example, this court is likely to inquire; Besides Access to Article III, what other Rights can be taken away from those who cannot pay to retain attorneys?

This Court ruled, "These laws are not narrow restrictions on the right because they prohibit certain individuals from exercising their [Rights] at all times and in all places. *Voisine v. US*, 136 S.Ct. 2272 (2016)

b. The Attorney General's letter improperly augmented Magistrate's authority

The Rationale for Local Rules 302 (c) (21) is contested but the record of lower courts may not show whether the courts considered any arguments. "I have to enforce the rules, I don't make them, but I have to enforce them." said Magistrate (June 10, 2010, Transcript at P2). The letter from Attorney General to Magistrate, stated (June 18, 2010, Dkt #49);

> "In the Eastern District, Local Rule 302(c)(21) requires that, in civil proceedings in Sacramento, *all* actions shall be directed to a magistrate judge, including dispositive motions and matters in actions in which all the plaintiffs or defendants are proceeding in *propria persona.* This proceeding was directed to Magistrate Judge Hollows as required under Local Rule 302 (c)(21), pursuant to 28 U.S.C. Section 636(b)(1)(B) & (C)."
>
> "Your honor clearly had authority to hear this matter and has authority to submit proposed findings of fact and recommendations for the disposition of this matter to Judge Damrell"

In that matter, petitioner had declined consent to the Jurisdiction of the Magistrate in writing, more than once. Following the letter, the Magistrate issued an Order citing undisclosed records.

> "The government seems to think we might fairly interpret § 636(a) as delegating to rulemakers the authority to give magistrate judges any power exercisable anywhere the rulemakers

> might choose to specify. But reading the statute in this way would render Congress's express territorial limitations pointless. The statute might as well be written this way: "Magistrate judges shall have all powers and duties conferred or imposed by law or by the rules." United States v. Krueger, 809 F.3d 1109, 1122 (10th Cir. 2015) (Gorsuch, J., concurring)

The Local Rule consciously disregard this Court's ruling in *INS v. Chadha,* 462 U.S. 919 (1983). "The assertion of Federal Rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 U.S. 22 (1923).

III. The Access to Article III Judges is inseparable pillar of the Constitution

There was no rationale given for the Local Rules of the district court and even if there is any, the Framers adopted the formal protections of Article III for good reasons, and "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *INS v. Chadha,* 462 U.S. 919 (1983). The Justices of this Court have emphasized the Access to III beyond consent; The Access to Article III is inseparable pillar of the Constitution and "Whether private parties may consent to an Article III violation. In my view, they cannot". *Wellness International v. Richard Sharif*, 135 S.Ct. 1932 (2015) (dissenting opinion of Chief Justice ROBERTS, with whom Justice SCALIA joins, and with whom Justice THOMAS).

"We conclude that ... the [Act] of 1978, has impermissibly removed most, if not all, of "the

essential attributes of the judicial power" from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts. Northern Pipeline Construction Co. v Marathan Pipe Line Co., 458 U.S. 50 (1982). This transfer of jurisdiction from the judicial branch to the legislative branch is unconstitutional. *See* Stern v. Marshall, 564 U.S. 462, 502-03 (2011) "A [statute] may no more lawfully chip away at the authority of the Judicial Branch than it may eliminate it entirely."

In the district court, the authority to hear is confined to Magistrates, a matter that requires this court's intervention. The core function of the Judicial branch is the authority to enter final judgment on private claims. That authority is confined by Article III, §1 to judges appointed by the President with the consent of the Senate, and who have life tenure and protection from salary diminution. Assigning core judicial functions to non Article III judges violates the separation of powers, as this court held in Stern v. Marshall, 564 U.S. 462, 502-03 (2011).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully Submitted,

Rehan Sheikh
Farzana Sheikh M.D.

Date: December 15, 2018