IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.: 18-8363

JOSHUA G. STEGEMANN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TO THE HONORABLE STEPHEN BREYER, JUSTICE FOR THE SECOND CIRCUIT, PURSUANT SUPREME COURT RULE 22.1

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QUESTIONS

1. May the Second Circuit dismiss a criminal appeal sua sponte under Neitzke v. Williams and 28 U.S.C. § 1915 (e) without briefing by any party and without rescindment of in forma pauperis status by the District Court under Fed. R. App. P. 24 (a) (3)?

2. Did the Second Circuit violate the party presentation rule as defined in Greenlaw v. United States by dismissing the appeal sua sponte thus warranting disposition by way of a GVR?

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The Second Circuit's order is appended hereon. (A-5)

BASIS OF JURISDICTION IN THE SUPREME COURT

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

CONSTITUTIONAL PROVISIONS IMPLEMENTED

Amendment 1

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

Article III, § 2

> The judicial power shall extend to all Cases, in Law and in Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - **to Controversies to which the United States shall be a party;** - Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

Joshua G. Stegemann timely appealed denial of his Fed. R. Crim. P. 33 and 12 (c) (3) motions for new trial and leave to file a late suppression motion. He requested the Second Circuit remand for an out-of-time suppression hearing so the facts may be further developed. (A-1) Without a peep from the government, the Second Circuit dismissed the appeal sua sponte. The District Court made no finding of frivolousness nor did it revoke IFP status under Fed. R. App. P. 24 (a) (3). Rather, it addressed Stegemann's motions on the merits. Perplexingly, the Second Circuit opined -- without benefit of adversarial testing -- Stegemann's appeal "'lacks an arguable basis either in law or in fact.'" (A-5)

BASIS FOR JURISDICTION BELOW

The Second Circuit had jurisdiction under 28 U.S.C. § 1291.

REASONS WHY THIS COURT SHOULD GRANT, VACATE, AND REMAND

The Second Circuit's arbitrary and baseless sua sponte dismissal denies Stegemann equal access to the court and violates the principles of party presentation. Greenlaw v. United States, 554 U.S. 237, 243 (2008)

Consider, the District Court issued judgment on the merits and Stegemann appealed. The District Court did not revoke IFP status nor make any finding of frivolousness. Accordingly, Stegemann's IFP status

continues in the Second Circuit, and here. Fed. R. App. P. 24 (a) (3)

Without benefit of briefing by any party, the Second Circuit dismissed Stegemann's appeal out of hand. This violates the principles of party presentation because "our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing facts and argument entitling them to relief." Greenlaw, 554 U.S. at 244

Application of this Court's holding in Neitzke to dismiss an unbriefed criminal appeal is flatly wrong. This is because a determination of frivolousness cannot be made without at least some sort of adversarial testing. In Neitzke, this Court addressed the standard for dismissal under Fed. R. Civ. P. 12 (b) (6) vis-a-vis 28 U.S.C. § 1915 (e). There, the Court cited Anders v. California to illustrate, by way of example, "that an appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits.'" Neitzke, 490 U.S. at 325

But recall, in Anders, a lawyer reviewed the record, researched applicable law, then informed the court no non-frivolous issues existed meriting appeal. Anders, 386 U.S. at 742

Here, nothing of the sort has occurred. Instead, the Second Circuit, itself, merely denied Stegemann opportunity to file his criminal appeal out of hand. Thus, this Court should vacate the order arbitrarily dismissing Stegemann's criminal appeal and remand for briefing on the merits. The Second Circuit's "bare conclusion [] was not enough." Id. at 742

Moreover, a simple search of Neitzke in the Second Circuit reveals it has an established practice of sua sponte dismissing pro se appeals

without so much as a brief being filed. See LexisNexis, Second Circuit Court of Appeals, Key Word Search "Neitzke"

The Second Circuit's established practice denies an entire class of people -- impoverished and lawyerless pro se litigants -- access to the court. Such denial of access to the courts hasn't been imposed since feudalistic England's magistrates heard only those cases or controversies referred by the Crown. In our Society, where "courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a pro se litigants rights." Greenlaw, 554 U.S. at 244

Here, the Second Circuit has not protected Stegemann's rights. Rather, it has denied him and other similarly-situated litigants the fundamental right of access to the court. A litigant (especially a criminal defendant) is entitled to frame the facts and arguments to withstand adversarial testing before the court. And, under Article III, § 2, and the First Amendment, the government (or another adversary) is entitled to argue against such position.

> In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principles of party presentation. That is, we rely on the parties to frame the issues for decision and assign the courts the role of neutral arbiter of matters the parties present.

Greenlaw, 554 U.S. at 243

This Court should determine, once and for all, whether Stegemann's, and other such pro se litigants,' appeals may be dismissed sua sponte without benefit of adversarial testing.

CONCLUSION

The sua sponte dismissal violates the principles of party presentation and denies pro se litigants the fundamental right of access to the courts. Certiorari should be granted, or, alternatively, Stegemann's case should be vacated and remanded for full briefing on the merits.

February 14, 2019

Respectfully submitted,

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