

DEC 28 2018

OFFICE OF THE CLERK

No. 18-8658

IN THE
SUPREME COURT OF THE UNITED STATES

(IBEABUCHI, IKEMEFULA CHARLES) PETITIONER
(Your Name)

vs.

PAUL PENZONE, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(COURT OF APPEALS, NINTH CIRCUIT)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(IBEABUCHI, IKEMEFULA CHARLES)

(Your Name)

(ADC NO. 177007, P.O. Box 3200)

(Address)

(Florence, Arizona, 85132-3200)

(City, State, Zip Code)

(CN/A)

(Phone Number)

ORIGINAL

Cover Page

QUESTION(S) PRESENTED

1. "Whether or not, the Court below committed a reversible error, by dismissing the Pro Se litigant's Complaint for failure to State a Claim?"
2. "Whether or not, the Court below, abused its discretion, at the evidentiary, Rulings, therein?"
3. "Whether or not, the Court below, exceeded its Jurisdiction by falling short of dismissing the Appellant's Complaint for frivolousness, 28 U.S.C. ss. 1915(d)?"

LIST OF PARTIES

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

[•] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

FILED DEC 4 2018

IKEMEFULA CHARLES IBEBUCHI,
AKA Charles Ikemefula Ibabuchi

NO. 18-16655

Plaintiff-Appellant,

D.C. No. 2:17-cv-03154-
JAT-JZB, District of
Arizona, Phoenix

v.

PAUL PENZONE, Sheriff, et al

ORDER

Defendant-Appellees.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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• <i>Caterpillar Inc. v. Williams</i> , 482 U.S. 386, 392 (1987)	6,
• <i>Wolff v. McDonnell</i> , 418 U.S. 539, 563-69 (1974)	8, 9, 10, 13, 22,
• <i>Wilkinson v. Austin</i> , 545 U.S. 209, 220-24 (2005) [143 GEO. L.J. ANN. REV. CRIM. PROC 1091 (2014)]	10,
• <i>Neitzke v. Williams</i> , 490 U.S. 319 109 S.Ct. 1827 104 L.Ed.2d 11, 338 (1989)	
• <i>Brower v. County of Inyo</i> , 489 U.S. 593, 109 S.Ct. 1378 103 L.Ed.2d 628 (1989)	12,

STATUTES AND RULES

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• 28 U.S.C. SS 1915(g)	7,
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OTHER	

• <i>Kaden v. Slykhuis</i> , 651 F.3d 966, 969 (8th Cir. 2011)	14, 19,
• <i>Farid v. Smith</i> , 850 F.2d. 917, 925-26 (2d Cir. 1988)	14, 18,
• <i>Reeves v. Pettcox</i> 19 F.3d 1060, 1062 (5th Cir. 1994)	15, 22,
• <i>Coffman v. Trickey</i> , 884 F.2d 1057, 1060 (8th Cir. 1989)	15, 22,
• <i>Nolan v. Scafati</i> , 430 F.2d 548 (1st Cir. 1970)	17

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

[•] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[•] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[•] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DEC 4 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- CONSTITUTIONAL AMENDMENT, FIRST, FOR PROPERTY
- CONSTITUTIONAL AMENDMENT, FOURTH, FOR SEIZURE
- CONSTITUTIONAL AMENDMENT, FIFTH, DOUBLE JEOPARDY
- CONSTITUTIONAL AMENDMENT, SIXTH, ATTORNEY/CLIENT PRIVILEGE
- CONSTITUTIONAL AMENDMENT, FOURTEENTH, EQUAL PROTECTION
- 42 U.S.C. SS. 1983, CIVIL RIGHTS ACTIONS
(UNITED STATES CODE; U.S.C.)

STATEMENT OF THE CASE

On, December 4, 2018, the Court Of Appeals, Ninth Circuit, by Judges, CANBY, TASHIMA, and FRIEDLAND, dismissed Petitioners Appeal as frivolous, and for the following reasons:

1. That, "the district Court certified that this appeal is not taken in good faith and revoked appellant's *in forma pauperis* status. See 28 U.S.C. § 1915(a)"
2. That, "On, September 27, 2018, the Court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (Court shall dismiss case at any time, if Court determines it is frivolous or mal-
icious)"
3. That, "Upon a review of the record, responses to the Court's September 27, 2018 Order, and opening brief received on September 27, 2018, we conclude this appeal is frivolous."
4. That, "We therefore deny appellant's motion to proceed *in forma pauperis* (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)."
5. That, "All other pending motions are denied as moot."
6. "DISMISSED"

But, the Supreme Court ruled, in Haines v. Kerner, 404

1 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), that, "we
2
3 cannot say with assurance that under the allegations of
4 the pro se Complaint, which we hold to less stringent stan-
5 dards than formal pleadings drafted by lawyers, it ap-
6 pears 'beyond doubt that the plaintiff can prove no
7 set of facts in support of his claim which would
8 entitle him to relief.'"
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"Accordingly, although we intimate no view whatever
on the merits of petitioner's allegations, we conclude that
he is entitled to an opportunity to offer proof. The jud-
gment is reversed and the case is remanded for further
proceedings consistent herewith."

On, September 13, 2017, the Respondent, in a Judi-
cious Prestidigitation or Fraud in the Court, ~~removed~~

1 the Petitioner's Verified Civil Right Complaint, from the Su-
2
3 perior Court of Arizona, in Maricopa County to the Uni-
4
5 ted States District Court for the State of Arizona,
6
7 in, Phoenix, ultimately, for Subject Matter Jurisdi-
8
9 cation, See, 28 U.S.C. § 1446 (b), et-law.
10

11 ““A defendant may remove any civil action bro-
12
13 ught in State Court over which the federal Court would
14

15 have Original jurisdiction. 28 U.S.C. § 1441 (a). Cater-
16
17 pillar Inc. v. Williams, 482 U.S. 386, 392 (1987)”
18

19 (See, the District Court's Order, dated, 11/07/2017)”
20

21 The District Court, further, overruled the Petitioner's
22
23 Objection to Respondent's Removal, to the District Court,
24

25 Supply, Stating that, “A federal Court has Original Ju-
26
27 nisdiction of all Civil actions arising under the Cons-

1 titution, laws, or treaties of the United States" 28 U.S.C.

2
3 § 1331, at law.

4
5 But, the District Court, erroneously omitted the

6
7 Charge of Four hundred (\$400.00) dollars, Removal

8
9 Fees, applicable to Removal of Complaints to Federal

10
11 Court, which authorizes the application of Authority

12
13 and Transfer of Jurisdiction, which the Respondents,

14
15 contumaciously refused to pay, and thereby, inva-

16
17 viably, raised the Question of Jurisdiction, as claimed

18
19 by the Federal Court. Accordingly, the Process of

20
21 Service was impeded by Court's Order of November

22
23 7, 2017, and this Honorable Court retains the Original

24
25 Jurisdiction to review, the Matter of Removal of

26
27 Pro Se Complaint, to Federal Court, for failure to state

1 a claim, as provoked in the District Court's Order, under
2
3 Certification, (See, Appendix, B, at page 7.) 28 U.S.C.
4
5 § 1915(g). "Strike" (See, Attenuation, therein.)
6
7

8 Assuming that, the District Court had the Jurisdi-
9
10 tion of the Removal of the Petitioner's Verified Complaint
11
12 as it claimed, "it certified that, "this appeal is not
13
14 taken in- good faith ..." (See, Appendix, B, at page 7.)
15
16 for the reasons stated in the Order and because
17
18 there is no arguable factual or legal basis for an
19
20 appeal."
21

22 Which Certification, again was erroneous, in, that
23
24 the Supreme Court's Opinion in, Wolff v. McDonnell, 418
25 U.S. 539, 563-69 (1974), detailed due process minimums
26
27

1 for disciplinary procedures, "(1) advance written notice
2
3 of charges; (2) written statement of reasons for discipli-
4
5 nary action taken and (3) opportunity to call witnesses
6
7 and present evidence if doing so will not jeopardize
8
9 institutional safety."

10
11 The axiomatic-relationship of the Petitioner's Com-
12
13 plaint to the Wolff's Supra at 569, is that, the alleged
14
15 Contraband by the Respondents' which caused the
16
17 Confiscation of the Inmate's Legal Mail Envelope, Should
18
19 had provoked the due process minimums for disciplin-
20
21 any procedures, but did not, therefore, the prisoner's
22
23 right to due process, Subject to restriction imposed by
24
25 nature of penal system was violated, by the taking-away
26
27 of the Inmate's Legal Mail Envelope, by the Respondents.

1 Wolff, *Supra* at 556.

2
3 U.S. Constitution Amendments, V, XIV, states that, the
4
5 Due Process Clauses are designed to protect the individual
6
7 against arbitrary government action, See, Wolff, *Supra*
8
9 at 558 and *Wilkinson V. Austin*, 545 U.S. 209, 220-24
10
11 (2005) (Due Process clauses prohibit government from
12
13 infringing on prisoner's liberty interest without due pro-
14
15 cess of law). 43 GEO. L.J. ANN. REV. CRIM. PROC. 1091 (2014)

16
17
18 The Court of Appeals, Ninth Circuit, analogously,
19
20 determined that, the Petitioner's Appeal was frivolous, be-
21
22 cause, "On, September 27, 2018, it ordered appellant
23
24 to explain in writing why this appeal should not be
25
26 dismissed as frivolous, See 28 U.S.C. § 1915(e)(2)"
27

1 (See, Appendix A. for review) "That, upon a review
2 of the record, responses to the Court's September 27,
3
4 2018, Order, and opening brief received on September
5
6 27, 2018, we conclude this appeal is frivolous"

7
8 But, see in, e.g. Neitzke v. Williams, 490 U.S. 319 109
9 S.Ct. 1827 104 L.Ed.2d 338 (1989) in regards to Informa
10
11 pauperis Complaint, dismissed as frivolous. Even though
12
13 the Petitioner's Appeal was filed and docketed by the
14
15 District Court and Court of Appeals, respectively, the
16
17 Corollary Compliance therein, proved that, the Peti-
18
19 tioner was granted Informa Pauperis, and was
20
21 therefore, protected by the law of Collateral Estoppel
22
23 which governed the standard provided in the federal
24
25 informa pauperis Statute, 28 U.S.C. § 1915(d) i.e., which
26
27

1 permits dismissal only if a petitioner cannot make any
2 rational argument in law or fact entitling him to relief;
3

4 By far and wide, the Court of Appeals' dismiss-
5
6 ing Petitioners Appeal for frivolous, under the, "only
7

8 if a petitioner cannot make any rational argument
9 in law or fact, entitling him to relief," measure,
10

11 denies the, "... a failure to state a claim does not in-
12

13
14 Varily mean that the Claim is without arguable merit,
15

16
17 See, Brower V. County of Inyo, 489 U.S. 593, 109 S.Ct.
18

19 1378 103 L.Ed.2d 628 (1989). That, frivolousness in the
20

21 § 1915(c) Context refers to a more limited set of Claims
22

23 than does Rule 12(b)(6) accords, moreover, with the un-
24

25 derstanding articulated in other areas of law that
26

27 not all unsuccessful claims are frivolous?"

1 There is no way, the Petitioner failed to state a
2
3 Claim upon, which a Relief, may be granted to him,
4
5 when, (1). the, Respondents did not institute a Discipli-
6
7 nary Procedure, against the Petitioner in the violation
8
9 of Legal Mail, Contraband of the Jail Policy or Regula-
10
11 tion. (2) and, that, the overly broad and exaggerated,
12
13 Regulation for Contraband of Scotch-Tape on the Legal
14
15 Mail Envelope was not listed nor, found in the Regula-
16
17 tion nor, Rule Book.
18

19 Accordingly, the Petitioner stated a Cognizable
20
21 Section 1983, Claim for Damages and injunctive Relief,
22
23 when his Legal Mail Envelope was Confiscated by the
24
25 Respondents, like, in Wolff, *supra* at 554-55 (1974),
26
27 a Cognizable Claim in § 1983 for damages and inj-

1 uncure relief, was stated when "prisoner's claim alleged
2 unconstitutionality of disciplinary proceedings, and
3 unconstitutionality of disciplinary proceedings, and
4 mail inspection regulations?"
5
6

7 See, Kaden V. Slykhuus, 651 F.3d 966, 969 (8th Cir.
8
9 2011) (1st Amendment claim stated when prison officials
10
11 confiscation of magazine as mail likely to incite violence
12
13 may have been "exaggerated response to prison concerns")
14

15 And, also in, Farid V. Smith, 850 F.2d. 917, 925-26
16
17 (2d Cir. 1988) (1st Amendment violated by confiscating
18
19 2 tarot books and homemade cassette tape mailed
20
21 to prisoner because prison officials offered no evidence
22
23 that materials posed legitimate threat to security.)
24

25 "punishing an inmate for conduct that is not proscri-
26
27 bed by rules or policy is arbitrary government action"

1 See, e.g. in Reeves v. Pettcox, 19 F.3d 1060, 1062 (5th Cir.
2
3 1994) (due process violation because prisoner charged
4 with offense had no fair warning or opportunity to
5
6 know that behavior was unlawful)
7
8

9 See, also in, Coffman v. Trickey, 884 F.2d 1057, 1060
10
11 (8th Cir. 1989) (due process violation because Charge
12 failed to specify what rule inmate violated when inmate
13 waved at visitor through security fence)
14
15
16

17 Accordingly, the Petitioner, in this Matter was not
18 charged with offense, in the Matter, because the Res-
19 pondents cannot correlate said Offense to any
20
21 Rules of the Maricopa County Jail, Policy or Regu-
22
23 tion, which thereby, conclude that, Petitioner's Appeal
24
25 was not frivolous in the context of failure to state a
26
27

1 Claim, upon which a Relief, may be granted, to the
2
3 Petitioner, herein, at-law.
4

5 Therefore, the Honorable Court must reverse for the
6
7 Overly broad and exaggerated Regulation for Contra-
8
9 band, to-wit, Scotch Tape, (which is not found in
10
11 the Regulation) for failure to state a claim.
12

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REASONS FOR GRANTING THE PETITION

1. The Court of Appeals, did not review the 31 pages, of the Petitioner's Informal Brief, as it reported in its Order of Dismissal, in page 1, that, "upon a review of the record, responses to the Court's September 27, 2018 Order, and opening brief received on September 27, 2018, we conclude this appeal is frivolous"

Accordingly, the Petitioner's Request for Index of Court's DOCKET Entries (DKTEntry 10, 11/26/2018) from the Court of Appeals, and Subsequently, remitted, therein, (See, <https://jenie.ao.dcn/cas-ecf/cmevf/servlet/DKTRpt?CaseNum=18-16655&dateFrom=&date...11/29/2018>) reveals that, on, 9/27/2018, NO. 6. Received Original and 0 Copies of Appellant Ikemefuna Charles Ibeabuchi Opening brief (Informal: Yes) 13 pages. Served on 09/27/2018. Major Deficiencies: OSC pending. [11028016] (SML) [Entered: 09/27/2018 04:05 PM]

Therefore, this Honorable Court should grant the Petition for the foregoing, reason of Incomplete Review by Court of Appeals, at-law. (Note: Page 31 of 31, of the Informal Brief, bore the Disclosure of the Receipt of Payment for, NOTICE OF REMOVAL TO FEDERAL COURT)

2. The Reason for granting the Petition is the Confidentiality found in Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970) was breached. (that, ... "Prisoners had corollary right to free and private communication with Counsel, and any interference with such a basic right bears a heavy burden of Justifi-

1 cation"?)

2
3 Petitioner's Second Amended Complaint, (District
4 Court Document Number: 15, PACER) filed on, May 11, 2018,

5
6 bore a July 26, 2017, Letter from Petitioner's, then Attorney, in
7
8 -regards to the interfered Petitioner's basic right, and,
9
10 wherein, the Attorney, kenned the lack of adequate pro-

11
12 cess in the delivery of the mail, to the Petitioner, for in-

13
14 tance; that, "he had not yet received a mail rejection

15
16 notification from the Respondents," as Proof of Defective

17
18 mail, which act of the Respondents or negligence made

19
20 the Confiscation illegal, and violated the Petitioner's 1st Amend-

21
22 ment Right, See, Farid V. Smith, 850 F.2d. 917, 925-26 (2d

23
24 Cir. 1988) (... Prison Officials offered no evidence that

25
26 Materials posed legitimate threat to Security)

1 Accordingly, the Petition should be granted, therein,
2
3 at-law, because, Petitioner stated a cognizable claim
4
5 in Section 1983, against the Respondents' tampering, and
6
7 analogously Petition, with Farid Supra, herein, to render
8
9 the Frivolous Opinion futile, at-law.
10
11

12 3. Another, Reason, why the Petition should be grant-
13 ed is the Regulation to Scotch tape- Contraband is
14 vague or "exaggerated response to prison concerns"
15
16 See, Kaden V. Slykhuus, 651 F. 3d 966, 969 (8th Cir. 2011)
17
18 (1st Amendment Claim stated when Prison Officials con-
19
20 fiscation of Magazine as Mail likely to incite violence
21
22 may have been "exaggerated response to Prison concerns")
23
24
25
26 Petitioner's Informal Brief, at 28, 29 of 31, Exhibit B,
27

1 Confained Listing of CONTRABAND, Section 10. which did
2
3 not include, SCOTCH TAPE. "Contraband is any unlawful
4
5 or prohibited item, material, possession, or substance that
6
7 is forbidden by law or by jail regulations. Altered items
8
9 are also considered contraband. You may possess mate-
10
11 rials issued by the Staff, items you have purchased from
12
13 the Canteen, authorized items received through the
14
15 Mail, and legal documents. Any items in your possess-
16
17 ion that are contraband will be confiscated and dis-
18
19 Ciplinary action, and/or administrative actions, may
20
21 be taken against you." (Informal Brief, at Page 28 of 31)
22

23 Again, there is no listing of Scotch-Tape, therein,
24
25 and which therefor, made repossession by Respondents
26
27 of the Petitioners Chattel, a Criminal Act, and this

1 Honorable Court Should review de novo.

2

3

4 4. This Court Should grant Petition for the Lack of

5 Jurisdiction of the District Court to hear a Removed

6 Matter, which is illegal for lack of fee payment, by

7 the Respondents' attempt in Removing the Case from

8 Superior Court of Arizona to Federal Court.

9

10 The Law requires a fee of Four hundred (\$400.

11 00) dollars, for charge of Cost, and not Zero (\$0.00)

12 dollar. Accordingly, Petitioner thithers this Submission

13

14 for the Consideration of the Court.

15

16 5. Finally, the U.S. Constitutional Amendments V,

17 and XIV. The Due Process clauses are designed to

18 protect the individual against arbitrary government

1 action, see Wolff, at 558 and Wilkinson at 220-24,

2
3 (Due Process Clauses prohibit government from infring-
4
5 ing on Prisoner's liberty interest without due process of
6

7 law.) That, punishing an inmate for conduct that
8

9 is not proscribed by rules or policy is arbitrary govern-
10
11 ment action. See Reeves v Pettcox, 19 F.3d 1060, 1062

12
13 (5th Cir. 1994) (due process violation because Prisoner
14

15 charged with offense had no fair warning or opp-
16

17 ortunity to know that behavior was unlawful.)
18

19 See, also in, Coffman v. Trickey, 884 F2d, 1057 1060
20

21 (8th Cir. 1989) (due process violation because charge fail-
22

23 led to specify what rule inmate violated when inmate
24

25 waved at visitor through security fence).

26
27 Therefore, the Petition should be granted for the

1 above Reasons, named, herein. Petitioner's Appeal
2
3 was not "frivolous or malicious" nor, intended by any
4
5 axiomatic ACT(S) by the Petitioner, to make same a
6
7 Frivolous or Malicious, Appeal, therein.
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecilia Abeabuchi.)

Date: 12/28/18