

DEC 21 2018

OFFICE OF THE CLERK

No. 18-8659

IN THE  
SUPREME COURT OF THE UNITED STATES

(IBEABUCHI, IKEMEFULU CHARLES) PETITIONER  
(Your Name)

vs.

AMY M. WOOD — 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, IKEMEFULU CHARLES)  
(Your Name)

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

(Florence, Arizona, 85132-3200)  
(City, State, Zip Code)

(N/A)  
(Phone Number)

**ORIGINAL**

Cover-Page

QUESTION(S) PRESENTED

1. Whether or not, the lower Court, committed a reversible error in dismissing the Pro Se litigant's Complaint, for failure to state a claim?
2. Whether or not, the lower Court, abused its discretion, by its Evidentiary Rulings, as a matter of Form 550/555, Second Amended Complaint, required, and Proof of \$280.00 WAIVER FEES?
3. Whether or not, the lower Court, exceeded its Jurisdiction by falling short of declaring a statutory Certification for frivolousness of Appellant's Complaint, 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:

IKEMEFULA CHARLES IBEBUCHI,  
AKA Charles Ikebefula Ibebuchi,

Plaintiff-Appellant,

v.

AMY M. WOOD, Clerk of the Court of  
Appeals, DIV. One, Court of Appeals State  
Of Arizona

Defendant-Appellee

FILED

DEC 4 2018

NO. 18-16650

D.C. NO. 2:17-cv-04592-

JAT-JZB

District of Arizona

Phoenix

ORDER

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	24 (iv)

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 is unpublished.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 is unpublished.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

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

THE UNITED STATES CONSTITUTIONAL AMENDMENT, ONE  
USCA, I ; RIGHT TO PROPERTY

THE UNITED STATES CONSTITUTIONAL AMENDMENT  
FOURTEEN,  
- USCA, XIV; RIGHT TO EQUAL PROTECTION

THE UNITED STATES CONSTITUTIONAL ARTICLE  
THREE, (U.S.C Art. 3)

(42 U.S.C. ss 1983) CIVIL RIGHTS COMPLAINT  
BY A PRISONER

## STATEMENT OF THE CASE

On December 4, 2018, the Ninth Circuit Court of Appeals, by Circuit Judges CANBY, TASHIMA, and FRIEDLAND, ruled that the Pro se Indigent Appeal, of the Petitioner, was frivolous, because,

1. "The district Court Certified that this appeal is not taken in good faith, and had revoked appellant's in forma pauperis status, accordingly. See 28 U.S.C. § 1915(a)."
2. That, "On September 10, 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 malicious)."
3. That, "upon a review of the record, response to the Court's September 10, 2018 Order, and opening brief received on October 2, 2018, we conclude this appeal is frivolous. 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)."
4. That, "All other pending motions are denied as moot."
5. "DISMISSED."

1 The Jurisdiction to review Appeals, from the Fed-  
2  
3 eval Courts of Appeals, is vested to the Supreme  
4  
5 Court, pursuant to 28 U.S.C. § 1254(1), and by the  
6  
7 United States Constitution, Article III, and in pari  
8  
9 Materia, to the raised Issues on Appeal, that were  
10  
11 dismissed as frivolous in the Court of Appeals.  
12

13 Accordingly, this Court has Jurisdiction to  
14  
15 review the, egregious, and erroneous, Appellate  
16  
17 Decision, before it, now, at-law.  
18  
19

20 The Court of Appeals, Ninth Circuit, seemed to  
21  
22 had issued a Procedural Order, Carelessly, mimi-  
23  
24 CKING the ORDERS, it issued on Cases, No. 18-15-  
25  
26 222, NO. 18-15726 and NO. 18-15981, respectively,  
27

1 and without Considering the Merit, associated  
2 with the Individual Cases, which, infelicitously  
3  
4 was unconstitutional, as the Causes Of Actions,  
5  
6 differ in the individual Cases, therein, at-law.  
7  
8  
9

10 In this Appeal, the Petitioner's Complaint in the  
11  
12 District Court, was dismissed, after Leave To  
13  
14 Amend, for the First, was Considered, and for  
15  
16 failure to state a claim, therein.  
17  
18

19 District Judge, Senior United States District  
20 Judge James A. Teilborg, dismissed, on the 29th  
21  
22 day of August, 2018, the Petitioner's Complaint for  
23  
24 failure to state a claim and Certified, that, "an Ap-  
25  
26 deal would not be taken in good faith for the re-  
27

1       sons stated in the Order and because there is no  
2  
3       arguable factual or legal basis for an appeal.”<sup>99</sup> But,  
4  
5       the District Court, did not expressly, “revoked  
6  
7       appellant’s in forma pauperis status.”<sup>100</sup> (Citing,  
8  
9       Appendix, A.) (Incorporated by reference, to Appe-  
10  
11       llant’s Informal Brief, at Page 24 of 47), which  
12  
13       error is thereby, reversible by this Honorable Court.  
14  
15  
16       The Certification of the District Court was  
17  
18       strictly for the, “there is no arguable factual  
19  
20       or legal basis for an appeal.”<sup>101</sup>

21  
22       The Court of Appeals, further erred, in its fail-  
23  
24       ture to review, in its’ entirety, the Appellant’s  
25  
26       Informal Brief, which the “Pilot Project,” Program failed  
27

1 to transmit, effectively, before the Panel's Review of  
2  
3 the Appeal. Appellant's Informal Brief, the Premise  
4  
5 of the Decision of the Court of Appeals, ORDER  
6  
7 was Submitted for (47 of 47, pages) and (not the  
8  
9 12 pages, Received by the Court on, October 2,  
10  
11 2018, (Citing, Index no. 7 of Docket Entry, 9-2 of the  
12  
13 Court of Appeals,) which fact, concludes that, the  
14  
15 Order of the Court of Appeals was a Procedural  
16  
17 Order, which did not ken the Merit of the Petiti-  
18  
19 oner's Informal Brief, and thereby, formed the basis  
20  
21 for Dismissal, therein.

22  
23 And, this Court has ruled in, "The Review of Courts  
24  
25 Opinion regarding Dismissal of Pro Se Complaints, in  
26  
27 Haines V Kemer 1104 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d

1 652 (1972), that, it cannot say with assurance that  
2  
3 under the allegations of the pro se complaint, which  
4  
5 we hold to less stringent standards than formal Ple-  
6 adings drafted by lawyers, it appears "beyond  
7 doubt that the plaintiff can prove no set of facts  
8 in support of his claim which would entitle him  
9  
10 to relief"

11 Because, the Dismissal of the Court of Appeals,  
12  
13 of the Appeal, pursuant to a Certification by the  
14 District Court, in 28 U.S.C. § 1915(a), is not the  
15 Standard as reflected in, *Informa paupers*,  
16  
17 Statute, 28 U.S.C. § 1915(d) which predicates the  
18 frivolousness of the Action, therein, e.g. under  
19  
20  
21  
22  
23  
24  
25  
26  
27 *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827 104

1 L.Ed.2d 338 (1989). And, therefore, the Petitioner's  
2  
3 Complaint filed, in forma pauperis is not automa-  
4  
5 tically frivolous within the meaning of § 1915(d)  
6  
7 because it fails to state a claim. Which Proof  
8  
9 Sufficed the Tenet, of Defective Procedural  
10  
11 Order, issued by the Court of Appeals, Ninth Circuit.  
12  
13

14 Again, although, the Court of Appeals has the  
15  
16 discretion to issue Order to Show Cause, it, in-  
17  
18 Variably denied the requisite Application, wa-  
19  
20 rranted to the Direction, therein, i.e., it should  
21  
22 had been the Defendant, accordingly, who should  
23  
24 be burdened to Show Cause, why the Appeal  
25  
26 Should not be ruled in light most favorable for  
27

1 the Appellant. Noting, in, Gomez v. Toledo, 446 U.S.  
2  
3 635 (1980) 100 S.Ct. 1920 64 L.Ed.2d 572, that, "in  
4  
5 a Section 1983 action against a public official  
6  
7 whose position might entitle him to qualified  
8  
9 immunity, a Plaintiff need not allege that the Offi-  
10  
11 cial acted in bad faith in Order to state a claim  
12  
13 for relief; burden is on defendant to plead  
14  
15 good faith as an affirmative defense."<sup>9</sup>  
16

17 Yet, the Court of Appeals, decided the Appeal  
18  
19 without, the Axiomatic and/or, Cofollowary, Requisite,  
20  
21 of the Respondent's Response, whose Error was a  
22  
23 Manifest Injustice, and the Abuse of Discretion,  
24  
25 as exhibited of the Evidentiary Ruling, therein.  
26  
27

The Structural Error, Construed for Frivolous

1 Order of the Court of Appeals, warrants the de novo  
2 Review, of the Petitioner's, militated, STATEMENT THAT  
3  
4 APPEAL SHOULD GO FORWARD, the underpinning, Le-  
5  
6 gal Sufficiency, overruled by the Court of Appeals,  
7  
8 to its Frivolous Decision. (See, Docket Entry 4 of the  
9  
10 Court of Appeals).

13 The Frivolousness Standard, by the way, is un-  
14  
15 less there is "indisputably absent any factual or legal  
16  
17 basis for the wrong asserted in the Complaint, and  
18  
19 the Trial Court, "in a Close Case", should permit  
20  
21 the Claim to proceed at least to the point where respon-  
22  
23 sive pleadings are required." Neitzke *Supra*, at 319.  
24  
25 Therefore, the District Court, erroneously Certified  
26  
27 the Dismissal under Federal Rule of Civil Pro-

1 Cedula, 12(b)6, and 28 U.S.C. ss. 1915(d), for 28 U-  
2  
3 S.C. ss. 1915(a), and which, thereby, formed the ba-  
4  
5 sis for the Excess of Jurisdiction, as alleged in the  
6  
7 Questions Presented, at Number 3, herein.

8  
9  
10 Petitioner's Appeal was not intended to cause  
11  
12 A Frivolous Submission, because, there is an "argu-  
13  
14 able factual or legal basis of the Claims, by the  
15  
16 Petitioner, in his \$280.00, as Property, withheld by  
17  
18 the Respondent, and the Petitioner's Right to,  
19  
20 amend his Complaint for the Second-Time,  
21  
22 in-accordance with the District Court Form  
23  
24 550/555, to state a plausible Claim, for which  
25  
26 A Relief, may be granted, to him, at-law.  
27

## REASONS FOR GRANTING THE PETITION

The Reason for granting this Petition is the expounded Merit of this Honorable Court's Jurisdiction, in the Case of Haines V. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), regarding Dismissal of Pro se Complaints, wherein, the United States Supreme Court ruled that, "We cannot say with assurance that under the allegations of the pro se Complaint, which we hold to less stringent Standards than formal pleadings drafted by lawyers, it appears 'beyond doubt' that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

"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 judgment is reversed and the case is remanded for further proceedings consistent herewith."

"See, also in Conley V. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 2L.Ed.2d 80 (1957), and in Dioguardi V. Dunning, 139 F.2d 774 (CA2 1944). Concurring with Plaintiff can prove no set of facts in support of his claim, which would entitle him to relief."

This Petition should be granted for the Reason of

1 1 the granted In forma pauperis status by the Dist-  
2 2 rict Court to the Petitioner on, April 9, 2018, Conse-  
3 3 quently, provoking the Law of Collateral Estoppel, to  
4 4 nudge the Tenet of Review, therein. See, In Neitzke

5 5 V. Williams, 490 U.S. 319, 109 S.Ct. 1827 104 L.Ed.2d

6 6 338 (1989). In regards to In forma pauperis Complaint,  
7 7 dismissed as frivolous.

8 8 Stating that, "According opportunities for respon-

9 9 sive pleadings to Indigent Litigants commensurate to

10 10 the opportunities accorded Similarly situated pay-

11 11 ing plaintiffs is all the more important because Indi-

12 12 gent Plaintiffs, so often proceed pro se and therefore

13 13 may be less capable of formulating legally compe-

14 14 tent initial Pleadings" We therefore hold that a

1 in the premises and the law, therein. (Citing, Appen-  
2 dix, A, and Appendix, B, herein, as Proof for Review)  
3

4 AS, emphasized, under Neitzke *supra*, at 319,  
5  
6 the Court of Appeals Ninth Circuit, this time, wron-  
7

8 ghy equated the standard for failure to state a  
9

10 claim, which applied to the Petitioners Complaint,  
11

12 not for the more lenient approach in frivolousness  
13

14 under § 1915(d), nor, under Rule 12(b)(6), both of  
15

16 which measures permit dismissals only if a peti-  
17

18 tioner Cannot make any rational argument in  
19

20 law or fact entitling him to relief. Rather the  
21

22 Court of Appeals, Ninth Circuit, dismissed Appeal  
23

24 as frivolous pursuant to the Contrasting or Con-  
25

26 flicting Certification by the District Court, after  
27

1 its' grant of Informa paupers to the Petitioner, here  
2  
3 in, at-law. Therefore, this Court must reverse and  
4  
5 remand, in- accordance with Neitzke *Supra*, at,  
6  
7 320, and 323.

8  
9 The Per curiam - by Justice Marshall, of the  
10  
11 Supreme Court, recites as, "The question presen-  
12  
13 ted is whether a Complaint filed in forma paupers  
14  
15 which fails to state a claim under Federal Rule  
16  
17 of Civil Procedure 12(b)(6), (as this Case was, in  
18  
19 the Certification, in-reality) is automatically frivolous  
20  
21 within the meaning of 28 U.S.C. § 1915(d). The  
22  
23 answer, we hold is no."<sup>18</sup>

24  
25 The frivolousness Standard, is unless there is  
26  
27 "Indisputably absent any factual or legal basis" for

1 the wrong asserted in the Complaint. But, when a  
2  
3 Complaint raises an arguable question of law which  
4  
5 the District Court ultimately finds is correctly resol-  
6  
7 ved against the plaintiff, dismissal on Rule 12(b)(6)  
8  
9 grounds is appropriate, but dismissal on the basis  
10  
11 of frivolousness is not. See, Brower v. County of  
12  
13 Inyo, 489 U.S. 593, 109 S.Ct. 1378 103 L.Ed.2d 628  
14  
15 (1989). That, frivolousness in the § 1915(d) context  
16  
17 refers to a more limited set of claims than does  
18  
19 Rule 12(b)(6) accords, moreover with the render-  
20  
21 standing articulated in other areas of law that,  
22  
23 not all unsuccessful claims are frivolous.  
24  
25 See, also, in Coppedge v. United States, 369 U.S.  
26  
27 438, 447, 82 S.Ct. 917, 922, 8 L.Ed.2d 21 (1962); See

1 also H.R. Rep. No. 1079, 52d Cong., 1st Sess. 1 (1892).

2  
3 "Under Rule 12(b)(6), a Plaintiff with an arguable  
4  
5 Claim is ordinarily accorded notice of a pending  
6  
7 motion to dismiss for failure to state a claim and  
8  
9 an opportunity to amend the Complaint before the  
10  
11 motion is ruled upon.

12  
13 These procedures, (the Court stated) alert him to  
14  
15 the legal theory underlying the defendant's challenge  
16  
17 and enable him meaningfully to respond by opposing  
18  
19 the motion to dismiss on legal grounds or by clari-  
20  
21 fying his factual allegations so as to conform with  
22  
23 the requirements of a valid legal cause of action.

24  
25 As, Stated, herein, the District Court did not  
26  
27 avail the Petitioner, the Requirement of Second Le-

1 ve To Amend Complaint, which legal theory Comp-  
2 ares to the Motion To Dismiss, by the Defendant. A  
3 Procedural Error, which this Court Should grant the  
4 Petition, for, and at-law.

5  
6  
7 The Petition should be granted, because, the  
8 Court of Appeals, abuse of discretion in withholding  
9 the Content of the Petitioner's, Appellant's Informal  
10 Brief, of 47 pages, to review upon 12 pages, at-  
11 law. See, In, Hoffman V. Halden, 268 F.2d 280  
12  
13 (1959) 2. Fed R. 2d. 241 at 31, 35, holding that the  
14 reviewing Court is bound by the record (Conclusi-  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 veness and impeachment) Matters which do not appear  
in the record may not be considered on appeal.

This Petition should be granted for the lack of

1       Responsive Pleading on the part of the Respondent.

2  
3       Citing, in, Gomez v Toledo, 446 U.S. 635 (1980) 100 S.-

4  
5       ct. 1920 64 L.Ed.2d 572, which stated that, "in a

6  
7       Section 1983 action against a public official whose

8  
9       position might entitle him to qualified immunity, a

10  
11      Plaintiff need not allege that the official acted

12  
13      in bad faith in order to state a claim for relief;

14  
15      burden is on defendant to plead good faith as

16  
17      an affirmative defense"

18  
19      Respondent, did not defend her action aga-

20  
21      inst the Petitioner, and this Court should grant

22  
23      Petition to enable her to do so, at law.

24  
25      Finally, this Petition should be granted pursu-

26  
27      ant to the District Court's Assertion, that, the, Res-

1 ponent is protected by absolute quasi-judicial im-  
2 munity from damages for civil rights violations,  
3

4 when they perform tasks that are an integral part  
5

6 of the judicial process." (See, citing at Appendix,  
7

8 B. page, 3 of 7-8.)  
9

10 Although, in Curry v. Castillo (In re Castillo), 297  
11

12 F.3d 940, 952 (9th Cir. 2002) (quasi-judicial  
13

14 immunity extends to "Court Clerks and other non-  
15

16 judicial officers for purely administrative acts")  
17

18 It is not absolute, as the District Court emoneou-  
19

20 sly, concluded, accordingly this Court must grant  
21

22 Petition. See, in, Snyder v. Nolen, 380 F.3d 279,  
23

24 288-89 (7th Cir. 2004) (Court Clerk not absolu-  
25

26 tely immune for refusing to file Pleadings when  
27

1 acting absent judicial direction.) Concurring with  
2

3 Pulliam v. Allen, 466 U.S. 522, 541-44 (1984) " (Judi-  
4

5 cial immunity does not bar prospective injunction  
6

7 against judge who imposed bail on individuals  
8

9 Charged with non-jailable offenses)" Accordingly,  
10

11 Courts have granted absolute immunity to prosecu-  
12

13 tors, judges, and other officials performing duties  
14

15 in connection with judicial acts. 143 GEO. L.J. ANN.  
16

17 REV. CRIM. PROC 1147-48 (2014). like the Judge  
18

19 Judicial Immunity does not bar prospective injun-  
20

21 ction against the Respondent, whose function is  
22

23 as other official performing duties with Judi-  
24

25 cial acts. Because in re Castillo, Supra, there is  
26

27 no absolute, immunity, therein, as such, this Court

1 Should grant the Petition to Correct the erroneous  
2 application of the District Court in, re-Castillo.  
3  
4  
5  
6  
7  
8  
9

10 The incontestably Supreme factors, as enum-  
11 rated in this Petition, to-wit; the Doctrine of Col-  
12 terial Estoppel, governing the granting of the Infor-  
13 ma Pauperis Status to the Petitioner by the Dist-  
14 rict Court, and the Collateral Enjoyment, therein,  
15 as now, required to Comport with Neitzke Case  
16 Law, the Frivolousness Standard of Equation of  
17 the Federal Statute, under Neitzke Supra, and  
18 the Quasi-Judicial Immunity in-re-Castillo, as  
19 Corrected, herein, all of which factors Should form  
20  
21  
22  
23  
24  
25  
26  
27 the basis of granting the Petition, herein, at-law.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Geula Cibeabuchi)

Date: 12/21/2018