

18-9232
No. _____

Supreme Court, U.S.
FILED

MAY 02 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

IKEMEFULA IBEABUCHI — PETITIONER
(Your Name)

vs.

BANICKI, ETAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(UNITED STATES COURT OF APPEALS FOR THE 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 8400)
(Address)

(Florence, Arizona, 85132-8400)
(City, State, Zip Code)

(N/A)
(Phone Number)

ORIGINAL

Cover Page

QUESTION(S) PRESENTED

1. Whether or not, the Court below, Committed a reversible error in dismissing the Pro se Appellant's Complaint for failure to state a Claim?
2. Whether or not, the Court below, abused its discretion on its ruling of the Evidence of Administrative Relief?
3. Whether or not, the Court below's denial of Appellant's Course of Judicial Remedy is a fundamental error?

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (Failure to state a claim)	4, 10, 11
2. Wolff v. McDonnell, 418 U.S. 539, 558 (1974) (Due Process)	12
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12. Cozzo v. Tangipahoa Parish Council, 279 F.3d 273, 283 (5th Cir. 2002)	9
13. Gonzales-Fuentes v. Molina, 607 F.3d 864, 890 (1st Cir. 2010)	12
STATUTES AND RULES	
1. 42 U.S.C. § 1983	
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OTHER

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STATEMENT OF THE CASE

On October 31, 2018, the United States Court of Appeals for the Ninth Circuit, filed an Order, in a MEMORANDUM DECISION, affirming the District Court's Judgment, dismissing the Petitioner's 42 U.S.C. § 1983 Complaint for Failure to state a Claim, for relief. (See, Appendix A, for review).

The Court of Appeals, reviewed de novo, the dismissal under 28 U.S.C. § 1915 A. (Citing, Wilhelm v. Rotman, 680 F.3d 1113, 1118 (9th Cir. 2012).)

The Court of Appeals, opined that, "The district court properly dismissed the Petitioner's action because the Petitioner failed to allege facts sufficient to state a plausible claim for relief." (Citing, Hebbe v. Pliler, 627 F.3d 338, 341-42 (9th Cir. 2010)).

On November 5, 2018, the Petitioner, filed a Petition for Re-hearing, (Fed. R. App. P. 40; 9th Cir. R. 40-1) alleging, amongst other facts, that, the Court of Appeals had overlooked a change in the law after the Case was submitted on its Informal Brief, filed on July 24, 2018.

For instance, that, the Heck's Factor, for claim under 42 U.S.C. § 1983, of the Petitioner's Sentence had been called into question by a federal Court's issuance of a writ of habeas corpus, (See, in, e.g., Heck v. Humphrey, 512 U.S. 477, 486-87 (1994)).

1 That, on, September 6, 2018, the Honorable Steven P.
2
3 Logan, of the United States District Court, issuing the
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5 Writ of Habeas Corpus Number, CV-18-00238-PHX-SPL-
6
7 (JZB) under 28 U.S.C. § 2254, issued an Order to
8
9 the State of Arizona to answer to the Petitioner's Com-
10
11 plaint, and whose Matter is still pending in the Dis-
12
13 trict Court, till date.

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15 See, in, McClish V. Nugent, 483 F.3d 1231, 1233 (11th
16
17 Cir. 2007), (a Cognizable § 1983 Claim was stated for
18
19 wrongful arrest because plaintiff was never convicted
20
21 of Crime.) under Heck's Factor. And, in, Wilson V. Jo-
22
23 hnson, 535 F.3d 262, 267-68 (4th Cir. 2008), (a Cogni-
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25 zable § 1983 Claim was stated for wrongful Imprisonment
26
27 because plaintiff sought damages for past Confinement,
28

whose Sentence had expired.), under, Heck's Factor.

The Court of Appeal, Should had reviewed the Merit of the Federal Question, which the Petitioner, alleged was sufficient grounds to, at-least, Procedure, under Heck's Supra. But, it did not.

Petitioner's, Arrest was false and wrongful, in that there was no new Case Number, alleging that, the Petitioner had Committed a Crime. See, McClish's Supra

And, the Imprisonment was also wrongful, pursuant to the Wilson's Supra. Because, on, October 4, 2004,

the Petitioner was Ordered, Removed, from the United States, in a Deportation Proceeding of the Immigration. Deportation Proceeding is Civil, See, Scale V. INS,

323 F.3d 150, 159-60 (1st Cir. 2003). Double Jeopardy

bars a Subsequent Criminal Prosecution, after its
Civil Disposition. See, 45 GEO. L.J. ANN. REV. CRIM. PROC.
526 (2016), Types of Proceedings. ^(c)

"Double jeopardy does not prevent a defendant from being subjected to both a Criminal punishment and a Civil Sanction for the same offense; rather, it "protects only against the imposition of multiple Criminal punishments for the same offense." Whether a Sanction is Civil or Criminal is "a matter of Statutory Construction." and depends on: (1) whether the legislature intended, "expressly or impliedly," to establish a Civil or Criminal penalty; and (2) "whether the Statutory Scheme was so punitive either in purpose or effect" as to "transform what was clearly intended as a civil remedy into a Criminal penalty.""

So, Petitioner's Grounds in his Petition for Writ
of Habeas Corpus, 28 U.S.C. § 2254, were mentorious
to a federal question, of which a claim of relief,
was invariably stated; for Compensatory Damages,

1 if the Respondent(s), in this Matter, were not acting
2
3 under Color of State law, during the alleged depriva-
4
5 tion. But, they were. Accordingly, Petitioner stated
6
7 a plausible Complaint, in the foregoing, Relief, as
8
9 provided under 42 U.S.C. § 1983, at-law.
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11 On, March 22, 2019, the Court of Appeals, denied
12
13 the Petitioner's, Petition for Rehearing, and issued
14
15 a Mandate on, April 1, 2019.
16

17 This Court has Jurisdiction, under Article
18
19 III of the United States Constitution, and also, in
20
21 28 U.S.C. § 1254 (1).
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REASONS FOR GRANTING THE PETITION

Reasons for granting the Petition are as follows;

1. The Court of Appeals, erred in concluding that, the District Court properly dismissed the Petitioner's action because the Petitioner failed to allege facts sufficient to state a plausible Claim for relief.

Petitioner stated a Claim for relief, by the Administrative Ruling of the External Referee, which upheld the Grievance Process, for a Partially Sustained Remedy. And, the failure by the Court of Appeals to Consider, same should be reviewed for Abuse of Discretion. (See, In, Grievance Number 2017-111279, Informal Brief, Exhibit B) (Citing, 18 U.S.C. § 3626)

2. Was the State official immune for actions of false or wrongful imprisonment, based on exercise of State Authority? See e.g., in Hafer V. Melo, 502 U.S. 21, 25-29 (1991) stating that, "individual Capacity Suit against state official for actions based on exercise of state authority upheld; that, state actors acting in official capacity are immune if state would have been immune.

See, also, in Reynolds V. Giuliani, 506 F.3d 183, 191 (2d Cir., 2007) stating that, "State Official can be sued in official capacity for injunctive relief only when state is moving force behind deprivation.

And, in, Cozzo V. Tangipahoa Parish Council, 279 F.3d 273, 283 (5th Cir 2002) (the Sheriff and Deputy were not arms of state entitled to 11th Amendment immunity).

Accordingly, the Petitioner stated a Claim for Relief, in his Complaint, and this Court should grant the Petition, therefore, at-law.

1 2. The Court of Appeals, also, erred in its denial
2
3 of the Petitioners, Petition for Panel Rehearing, and
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5 Concluded, that, "No further filings will be entertained
6
7 in this closed case."
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9 The Case is not closed, yet, as Certificate of App-
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11 ealability is grantable by this Court, which entitles the
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13 record, to reflect that, Petitioner, proceeded to the Su-
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15 preme Court, as a matter of right on Appeal.
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17 Petitioner, Contended in his Petition for Panel Re-
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19 hearing, that, there were a change in law, since the
20
21 Court's Order of Affirm, and applicable to Heck v.
22
23 Humphrey, 512 U.S. 477, 486-87 (1994) which the Court
24
25 of Appeals, might had overlooked, for a federal question,
26
27 called by a Federal Court's issuance of a Writ of habeas
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1 Corpus in the Petitioner's Sentence. Which suffices
2
3 a claim, pursuant to 42 U.S.C. § 1983.
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5 The Petitioner, might not had been released and
6
7 discharged from Custody, pursuant to his habeas re-
8
9 lief, but, his claim for relief, against state officials
10
11 in, § 1983, is ripe, for adjudication, under, Heck's Supra,
12
13 axiomatically, the Petitioner, did state a claim that
14
15 is plausible on its face, to suffice a relief, at-law.
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17

18 3. The Petitioner's rights, to, Procedural Due Process.

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20 The Fifth and Fourteenth Amendments, prohibit the gov-
21
22 ernment from depriving an Inmate of Life, Liberty, or
23
24 Property without due process of law. U.S. CONST. AMEN-
25
26 DMENTS, V, XIV. The Due Process clauses are designed
27
28 to protect the individual against arbitrary government

1 action, see, *Wolff v. McDonnell*, 418 U.S. 539, 558 (19-
2
3 74); see also, *Wilkinson v. Austin*, 545 U.S. 209, 220
4
5 -24 (2005) (Due Process clauses prohibit govern-
6
7 ment from infringing on Prisoner's Liberty Interest
8
9 without due process of law)
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11 That, "A violation of procedural due process
12
13 requires (1) that, the state has interfered with the
14
15 Inmate's protected liberty or property interest, and (2)
16
17 that procedural safeguards were constitutionally in-
18
19 sufficient to protect against unjustified deprivations.
20

21 See, *Wilkinson Supra* at 545 U.S. 222-23"
22

23 That, "Protected liberty interests can be created
24
25 by, (B) a Court Order, see. e.g. *Gonzales-Fuentes*
26
27 *v. Molina*, 607 F.3d 864, 890 (1st Cir. 2010) (Liberty
28

1 Interest in enjoying form of Conditional release created
2
3 by lower Court decisions granting release under elect-
4
5 ronic Supervision program and (c) State and Federal
6
7 Statutes and regulations, see, Sandin V. Connor, 515
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9 U.S. 472, 483-84 (1995).
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11 This Court Can grant the Petition for the Protect-
12
13 ed liberty Interest, after, double jeopardy clause that is
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15 proven, in this Petition and for the Federal Statutes,
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17 and regulations which granted the Petitioner the Citi-
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19 zenship to the United States, as processed on, March
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21 23, 2016, after, Deportation Proceedings.
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cæula Clbeabuchin

Date: 5/2/19