No. _____

In The

Supreme Court of the United States

VERONICA W. OGUNSULA,
Petitioner

vs.

ERIC H. HOLDER, JR. ET AL.
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Petition For Writ Of Certiorari

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QUESTIONS PRESENTED

1. What is the meaning of 28 U.S.C. Section 1915 (e) (2) (b) (ii), "fails to state a claim on which relief can be granted", as it relates to Rule 12 (b) (6)? Is there a significant difference in the procedural process for dismissing civil rights claims under the two statutes?

2. Are the in forma pauperis plaintiffs precluded from receiving notice, an opportunity to respond, and leave to amend because they filed under in forma pauperis statute when their claims are neither frivolous nor malicious? Should the Court dismiss an informa pauperis complaint's defendants, claims, or the entire complaint without notice, an opportunity to respond, or leave to amend?

3. Does federal pleading rules, and Rule 8 (a) specifically, provide for dismissal of a complaint or claim without notice for asserting an incorrect statute or defective legal theory supporting the claim asserted?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the Petition is as follows:

- Veronica W. Ogunsula, Petitioner

Respondents:

- ERIC H. HOLDER, JR., in his official capacity as U.S. Attorney General, Department of Justice, (DOJ)
- James B. Comey, in his official capacity as Director, Federal Bureau of Investigation, Washington, DC
- Thomas E. Perez, individual and in his official capacity as the former Assistant Attorney General, Civil Rights Division, DOJ H.
- Marshall Jarrett, official capacity as former Director, U.S. Attorneys' Office, DOJ
- Michael E. Horowitz, individual and in his capacity as the Inspector General, (DOJ)
- Joseph S. Campbell, individual and in his individual capacity as the Deputy Assistant Director, Criminal Investigative Division, FBI
- Sandra A. Bungo, in her individual capacity as the Unit Chief, Initial Processing Unit, Internal Investigations Section, Inspections Division, FBI Rod Rosenstein, individually, U.S. Attorney for Maryland, Baltimore, Maryland
- Bryan E. Foreman, individually and in his official capacity as the former Assistant U.S. Attorney, Greenbelt Maryland
- Thomas Coyle, individually and in his official capacity as an Agent, FBI Baltimore, Maryland

- Stephen E. Vogt, in his individual capacity as the Special Agent In Charge, FBI Baltimore, Maryland
- Sharon Marcus-Kurn, individually, U.S. Attorney's Office, Washington, D.C.
- David Abramowitz, individually and in his capacity as the Vice President, Humanity United, Washington, DC
- Derrick Nutall, individually and in his official capacity as the Pastor & New Bethel Baptist Church, Washington, DC
- Bishop Neavelle Coles, in his capacity as the Jurisdictional Bishop of the D.C. Jurisdiction, Church of God In Christ, Washington, D.C.
- Glen F. Ivey, individually and in his official capacity as the former State's Attorney, Prince George's County Maryland
- Franklin Shelton, Prosecutor, Prince George's County Maryland
- Renee Battle Brooks, Prosecutor, Prince George's County Office of the State's Attorney
- Angela Alsobrooks, in her official capacity as the State's Attorney, Prince George's County Maryland Government
- Prince George's County Health Department, Largo, Maryland
- Michael Lanier, Detective, Greenbelt Maryland Police Department
- Mark A. Magaw, in his official capacity as Chief, Prince George's County Maryland
- Police Fraternal Order of Police, National Headquarters
- Vernon R. Herron, individually and in his capacity as the former Deputy Chief Administrative Officer, Public Safety and Director of Homeland Security, Prince George's County Government

- Gwendolyn T. Clerkley of Prince George's County Maryland Government;
- Montora Mays of Prince George's County Maryland Government
- Paul and Crystal Scott, Bethesda, Maryland;
- Lisa A. Owens, Bowie, Maryland
- Robert J. Williams, Sr., individually and in his capacity as the Pastor & St. Paul Baptist Church, Capitol Heights, Maryland
- John K. Jenkins, individually and in his capacity as the Pastor of First Baptist Church of Glenarden, Landover, Maryland
- Fannie Mae, Washington, DC
- Mike Torrey, Long & Foster, Annapolis Maryland
- Geesing/BWW Law Group, Bethesda, Maryland
- John Doe
- Jane Doe

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OPINIONS BELOW

On June 26, 2019, United States Court of Appeals for the Fourth Circuit vacated a denial of a Motion to Reconsider an extension of time to file a Petition For Rehearing and Rehearing En Banc, and deemed the Petition For Rehearing and Rehearing En Banc filed June 9, 2016 to be timely filed. The Appeals Court then denied the Petition after review. This order is reprinted in the Appendix on page 32. The Order of the U.S. Court of Appeals for the Fourth Circuit affirming the decision of the U.S. District Court for Maryland appears on page 34. The Order and Opinion of the U.S. District Court is reprinted on page 36. The transfer order from the U.S. District Court for the District of Columbia is reprinted on page 47.

JURISDICTION

The U.S. District Court for the District of Maryland dismissed a case against the named defendants on June 22, 2015.

The U.S. Court of Appeals for the Fourth Circuit affirmed the decision of the lower court on March 21, 2016. On June 26, 2019, the 4th Circuit recalled its mandate, granted the Petitioner's motion to reconsider the denial of an extension of time to file her Petition For Rehearing and Rehearing En Banc, and deemed the Petition for Rehearing and Rehearing En Banc filed June 9, 2016, to be timely filed. The court denied the Petition for Rehearing and Rehearing En Banc after review of the Petition.

The Supreme Court of the United States has jurisdiction under 18 U.S.C. § 1254 (1) to review this Petition for Writ of Certiorari.

INTRODUCTION

The Petitioner, Veronica Ogunsula, submitted to the United State Supreme Court a Petition for Writ of Certiorari on June 21, 2016. However, this Petition was deemed untimely because a judgment has been entered in this case by the United States Court of Appeals for the Fourth Circuit on March 21, 2016.

The Petitioner was advised by the Clerk's Office of the U.S. Supreme Court that she could file a Motion To Direct The Clerk To File A Writ of Petitioner Out Of Time. Ms. Ogunsula filed this motion on June 24, 2016. During this time the Ms. Ogunsula also filed an Emergency Motion For Relief addressed to the Chief Justice of the Court along with several Emergency Motions that had been addressed to the U.S. Court of Appeals for the Fourth Circuit.

As stated earlier, the Fourth Circuit recently reviewed its denial of a Motion To Reconsider a request for extension of time to file a Petition for Rehearing and Rehearing En Banc and granted the extension of time. The Petitioner/Appellant's Petition filed on June 9, 2016 was deemed timely. As such, Ms. Ogunsula is renewing her Petition For Writ of Certiorari to the Supreme Court with this filing.

The Supreme Court should grant this Writ to provide guidance and resolve conflicts among the Circuits regarding whether notice is recommended or constitutionally required before a sua sponte dismissal of an in forma pauperis pro se complaint that is neither frivolous nor malicious, but *may* "fail to state a claim on which relief may be granted". Further, the Court should grant this Writ to provide how its view of

pleading standards, especially as it relates to pro se complaints, harmonizes with its decision in Tracey L. Johnson and David James, Jr. vs. City of Shelby, Mississippi,_Swierkiewicz v. Sorema on heightened pleading standards and the pleading standard set forth in Bell Atlantic vs. Twombly and Ashcroft vs. Iqbal. (See Johnson vs City of Shelby, MS 135 S.Ct 346, 2014, regarding dismissal of complaints for "imperfect statement of legal theory; Swierkiewicz v. Sorema NA, 534 US 506, 2002 for pleading standard for civil rights cases; Bell Atlantic Corp. vs Twombly, 127 S.Ct. 1955, 2007 and Ashcroft vs Iqbal, 129 S.Ct. 1937, 2009 for pleading standards applying to all civil cases.)

STATEMENT OF THE CASE

Veronica W. Ogunsula, pro se, filed a complaint on April 22, 2015 in the United States District Court for the District of Columbia against Eric H. Holder, in his [official] capacity as then U.S. Attorney General; James B. Comey, in his [official]capacity as Director of the Federal Bureau of Investigation, Washington, DC; Thomas E. Perez, [official] as the former Assistant Attorney General, Civil Rights Division, United States Department Of Justice (USDOJ); H. Marshall Jarrett, [official] as former Director, U.S. Attorneys' Office, USDOJ; Michael E. Horowitz, in his [official] capacity as the Inspector General, USDOJ; Joseph S. Campbell, in his [official] capacity as the Deputy Assistant Director, Criminal Investigative Division, FBI; Sandra A. Bungo, in her [official] capacity as the Unit Chief, Initial Processing Unit, Internal Investigations Section, Inspections Division, FBI et. al.

Ms. Ogunsula filed the complaint along with a Motion for Leave to Proceed in forma pauperis and an Emergency Motion for an Order to vacate and rescind an April 9, 2015 eviction from her home in Bowie, Maryland. The U.S. District Court for the District of Columbia transferred the case to the U.S. District Court of Maryland on May 6, 2015 because of the property interests in Maryland and the majority of the parties resided or did business in Maryland. (See the Transfer Order in the Appendix on page 47.) The Maryland Court issued an order granting the in forma pauperis Motion, but dismissed the complaint and denied the Emergency Motion on June 22, 2015.

The Ms. Ogunsula originally filed the complaint because of certain civil rights violations under 42 U.S.C. Section 1983, 1985, 1986 and other violations including 42 U.S.C. Section 1994, witness intimidation and retaliation related to reports she had made to federal and local law enforcement (2009-2014) as well as Congress (between 2009-2014). The reports were regarding situations she encountered while working as a contractor for Prince George's County Maryland Government where she was employed from 2005 to 2008. The reports alleged retaliation that occurred between 2009 and 2015 culminating with an eviction from her primary residence in Bowie, Maryland. During her employment with Prince George's County, Maryland, she truthfully disclosed information in an internal investigation regarding a federal Homeland Security grant program that conflicted with public statements of local government officials.

The complaint also alleged a conspiracy, retaliation and other civil rights violation she experienced after leaving her position at the county government that resulted in several years of unemployment, the foreclosure of her Bowie, Maryland home and loss of her personal belongings. She further alleged that as she made reports to federal law enforcement and Congress between 2009 and 2014 about her situation, she encountered retaliation and intimidation.

From 2012 to 2014, in an effort to obtain relief from the extrajudicial retaliatory campaign against her which included assault, stalking, blacklisting, property damage, irregularities in the foreclosure of her home and thefts, etc., Ms. Ogunsula contacted federal law enforcement personnel by telephone, in person and via correspondence. Ms. Ogunsula made

reports to police and individual members of Congress and Congressional committees. She alleged that the retaliation and blacklisting that occurred infringed on her civil rights. Despite her extensive experience with federal telecommunications/technology programs, her written letters of recommendations, and undergraduate and graduate degrees in business, the complaint also alleged that Ms. Ogunsula experienced more than 72 months of unemployment. She had not been able to obtain full-time employment consistent with her professional skills and education since her resignation in May 2008 from Prince George's County Maryland Government. She provided examples of the alleged discrimination and blacklisting by Washington DC area Staffing Agencies who would not hire her or refer her for temporary staffing positions even though she had passed their pre-screening and skills tests.

Ms. Ogunsula stated in the complaint that she suffered discrimination based on her Nigerian heritage, skin color, and rumors about her sexual orientation within her religious community. She stated facts that members of her church community shunned and isolated her because of rumors that she was gay.

Without anticipating a statute of limitations defense or any other affirmative defense, Ms. Ogunsula brought the original action against law enforcement because they had foreknowledge of the conspiracies and civil rights violations alleged because Ms. Ogunsula had contacted them and or their agency staff by mail, email, telephone or in person. The officials failed to prevent or aid in preventing the civil rights violations alleged that resulted in both physical, emotional and financial harm to Ms. Ogunsula. Ms.

Ogunsula brought the action against other defendants in the original action because they were parties to the civil rights violations, acts of witness intimidation and retaliation, and a conspiracy to cause her both financial and emotional harm.

The U.S. District Court of Maryland issued an order and opinion dismissing the case in part without prejudice and in part with prejudice. The District Court also dismissed certain defendants from the civil complaint without notice. The U.S. District Court did not provide Ms. Ogunsula with notice, or an opportunity to respond or amend her complaint before it terminated the case. Additionally, U.S. District Court would not entertain any motions after it delivered its order on 6/22/15.

On August 11, 2015, Ms. Ogunsula appealed the case to the U.S. Appeals Court for the 4th Circuit Court in Richmond, Virginia. On August 17, 2015, she submitted to the 4th Circuit Temporary Restraining Order Motions that she had previously submitted to the U.S. District Court for Maryland that had been returned to her by the U.S. District Court. She asked the Appeals Court for relief while the case was on appeal. On August 21, 2015, the Appeals Court issued an order deferring the decisions on the pre-appeal orders pending review of the Informal Brief. Also, during the course of the appeal, Ms. Ogunsula, via Temporary Restraining Orders, asked the Appeals Court to grant relief from what she believed was retaliation related to this case. She believed the retaliation was related to this case because there was a nexus between incidents and filings or other activities in this case. She promptly notified both local and federal authorities and advised the Court of her

actions. However, the Appeals Court did not rule on any of the motions (See Appendix, page 34.) until the Order was delivered on March 21, 2016. The 4th Circuit affirmed the District Court's order and they granted no relief in the matter.

REASONS FOR GRANTING THE WRIT

I. The Circuits Are Split On Whether Notice Is Required Before Sua Sponte Dismissal of In Forma Pauperis Pro Se Complaints

Introduction

The Circuit Courts are split on the important question concerning sua sponte dismissals, without notice and a chance to respond or amend, of in forma pauperis pro se complaints that are not frivolous or malicious, but may "fail to state a claim on which relief may be granted".

The addition of "fails to state a claim on which relief may be granted" clause to Section 1915 governing in forma pauperis complaints in the 1995 Prison Litigation Reform Act (PLRA) was specifically aimed at limiting and reducing the number of "frivolous and abusive prisoner complaints" brought against prison officials. Congress' intent was not to abrogate the long standing fundamental principle of our American judicial system requiring notice before an adverse action is taken against an individual. (See Lugo vs Keane, 15 F.3d 29, 2nd Circuit 1994)

The Court should grant the Writ to resolve the important question of whether a sua sponte dismissal of a in forma pauperis pro se complaint that is neither frivolous nor malicious, without an opportunity to respond or amend the complaint, conflicts with the U.S. Congress' original intention in enacting Section 1915 which was to provide equal access to the courts and put "indigent plaintiffs on a similar footing with paying plaintiffs" (See Neitzke vs Williams, 490 U.S.

319,1989). Congress' goal, as reflected in the Congressional records, overwhelmingly emphasized prisoner complaints and not pro se complaints brought by members of the general public. So it appears that Congress' intent was not to restrict the number of pro se complaints brought in good faith by the general public where there was no documented evidence of excessive abuse or frivolousness. Since Section 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners, an interpretation that 1915 (e) precludes (notice and) leave to amend would penalize all in forma pauperis plaintiffs for the alleged abuses of one group of plaintiffs. (From Lopez vs. Smith, 203 F. 3d 1122, 9th Circuit 2000; emphasis added)

Additionally, the Court should grant this writ to provide guidance and resolve conflicts among the Circuits regarding whether notice is recommended before a sua sponte dismissal of an in forma pauperis pro se complaint. The First, Second, Seventh, Ninth, and Eleventh Circuits favors giving notice and a chance to amend an in forma pauperis complaint/claim that is not frivolous or malicious and "fails to state a claim on which relief may be granted" in accord with Rule 12 (b) (6). A paying pro se litigant would not be subject to a sua sponte dismissal under Rule 12 (b) (6) except under extraordinary conditions. Strengthening the notice pleading standard for in forma pauperis pro se litigants who most often have little to no knowledge of the legal system, but are forced to represent themselves, would put litigants on notice of an opportunity to act.

Lastly, the Court should grant this writ to review how its 2014 decision in Tracey L. Johnson and David

James, Jr. vs. City of Shelby, Mississippi it relates to the Petitioner case. In Shelby this Court stated that a "dismissal of a complaint for imperfect statement of legal theory supporting the claim asserted" is not required. (See Johnson vs City of Shelby, MS 135 S.Ct 346, 2014) In fact, this court stated in Johnson vs City of Shelby that, "The Court should freely give leave [to amend a pleading] when justice so requires." [See also Federal Rules of Civil Procedure 15 (a) (2)] In this case, 'justice so requires' this opportunity.

Now recognizing that in Bell Atlantic Corp. v. Twombly, the Supreme Court did state a new pleading standard requiring that "allegations must be more than conclusory" and in Iqbal, the Court made clear that this heightened standard applied to all civil actions, there is even more cause for Courts to provide notice to the pro se litigant and allow them to review these standards against their complaint to determine if they can plead a case given the confines that the standards set forth. (See Woods v. City of Greensboro, 855 F.3d 639, 4th Circuit, 2017)

II. Harmonize Pleading Standards for Discrimination Claims In Light of Swierkiewicz, Twombly and Iqbal

In Swierkiewicz v. Sorema NA, 534 US 506 Supreme Court 2002, the Supreme Court affirmed the standard set forth by the Federal Rules of Civil Procedure 8 (a) (2) which states that "a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8 further states that the "simplified pleading standard applies to ***all*** civil actions, with limited exceptions. If the Ogunsula vs. Holder et al. pleading failed to specify the allegations in a manner that provided sufficient notice and the claim (s) and/or cause (s) is not frivolous, the District Court should have used the notice pleading process under Rule 12 , specifically Rule 12 (e) to obtain a more understandable, concise complaint or provide notice of impending dismissal and allowed the plaintiff to respond or leave to amend complaint.

As the original complaint surely exemplifies, pro se parties are presented with a daunting task of knowing in which court (i.e., State vs. Federal) to plead his/her case and how much information to include in a complaint. The Federal Rules of Civil Procedures' Rule 8, once discovered, are both a guide and somewhat of a saving grace for pro se plaintiffs who are inexperienced with the courts and the legal process, and who for one reason or another have to represent themselves. For this pro se plaintiff, the Federal Rules of Civil Procedure were discovered after the initial pleading was filed.

For example, the plaintiff intended to communicate very strongly that she felt "retaliated" against because

she reported wrongdoing related to the administration of a federal grant program to federal law enforcement and Congress in 2009. (For example, see Ogunsula vs Holder, #174, 175, 184, etc., pg. 50ff) This was initially identified in the complaint as witness intimidation and retaliation (18 U.S.C. §§ 1512 & 1513). In a subsequent brief to the Appeals Court, the Appellant correctly identified the events as First Amendment violation under section 1983. In the complaint, she did not designate the violation as Section1983 First Amendment retaliation although she used the word "retaliation at least 15 times and retaliatory acts (four times). Instead the facts ascribed to the retaliatory acts in the Ogunsula vs Holder complaint were claimed incorrectly under 18 U.S.C. §§ 1512 and 1513, a criminal statute prohibiting witness tampering and retaliation. This was an incorrect statute.

To be sure, some of the claims may be time barred by statute, however this does not defeat the need for notice and the opportunity to amend the complaint considering the statute of limitations and the need to plead facts that fall within the statutory time period. The Petitioner believes that she can comply with this requirement.

For example, the plaintiff intended to communicate very strongly that she felt "retaliated" against because she reported wrongdoing related to the administration of a federal grant program to federal law enforcement and Congress in 2009. (For example, see Ogunsula vs Holder, #174, 175, 184, etc., pg. 50ff) This was initially identified in the complaint as witness intimidation and retaliation (18 U.S.C. §§ 1512 & 1513). In a subsequent brief to the Appeals Court, the Appellant correctly identified the events as First Amendment

violation under section 1983. In the complaint, she did not designate the violation as Section1983 First Amendment retaliation although she used the word "retaliation at least 15 times and retaliatory acts (four times). Instead the facts ascribed to the retaliatory acts in the Ogunsula vs Holder complaint were claimed incorrectly under 18 U.S.C. §§ 1512 and 1513, a criminal statute prohibiting witness tampering and retaliation. This was an incorrect statute.

Also, the Ogunsula vs Holder et al. complaint pled the following on pg. 38, para 126 that Ms. Ogunsula sent a letter to the FBI Inspector General in 2012 and provided "new information which she had not previously disclosed to the Baltimore Field Office regarding activities she believed to be criminal civil rights violations and a conspiracy against rights violation under the color of law, peonage and included a cover-up of said activities." If the allegations are accepted as true and, the injuries claimed by the plaintiff were perpetrated by the Defendants, such as foreclosure of her Prince George's County home and loss of her livelihood; and if Ms. Ogunsula was targeted, as alleged, for this conspiracy because she made reports to the federal authorities and Congress of corruption and retaliation by her former employer, then she would have a valid retaliation claim. (See Pickering v. Board of Education, 391 U.S. 563, 1968)

In Bloch v. Ribar, Bloch applied the following three-part definition of retaliation: "(1) that the plaintiff was engaged in a constitutionally protected activity; (2) that the defendant's adverse action caused the plaintiff to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the adverse action was

motivated at least in part as a response to the exercise of the plaintiff's constitutional rights." (Bloch vs Ribar, 156 F.3d 673, 1998) It must be added that the plaintiff made reports to Congress and federal law enforcement in 2009. But she also, made reports and requested oversight from Congressional Committees in 2013 and 2014. It is plausible that the defendants wanted to punish Ms. Ogunsula for making reports to federal law enforcement about corruption she had experienced and requesting oversight by Congress and Congressional Committees. Ms. Ogunsula alleged injuries such as stalking, blacklisting from employment opportunities (2012-2015), foreclosure of her home in 2013/2014, and an illegal eviction from her home in 2015 in which all of her personal property was deposed of. This is the type of "injury that would likely chill a person of ordinary firmness from continuing to engage in that activity." (See also Bloch vs Ribar)

Law enforcement in fact refused to investigate the civil rights abuses, criminal assault and acts of intimidation inflicted upon the plaintiff and neglected to follow normal investigative procedures. Their actions create a claim of retaliation. (See Rochon vs. Gonzales, 438 F.3d 1211, 2006) Ms. Ogunsula should have the opportunity to amend her complaint and include facts that support the retaliation she alleges.

Lastly, if private individuals participated with law enforcement or public officials or acted alone, as alleged, to deny Ms. Ogunsula certain Constitutional protections, such as 14th amendment protections (e.g., equal protection or due process with regard to her person or property rights, etc.), and in addition to the retaliation, if her Nigerian heritage, skin color, or

perceived sexual orientation were factors (animus), then these would be civil rights violations (Section 1983/1985). The notice to federal law enforcement and their failure to prevent these violations or injuries would also constitute Section 1986 violations.

So then, the Rule 8 standard contradicts the District Court's statement regarding the 42 U.S.C. § 1985 claims. The Court said, "A cause of action under §1985(3) requires proof of a conspiracy to deprive a person of "rights or privileges" under the law. Absent evidence that Plaintiff's rights were violated by Defendants, there is no claim under §1985."[1] We know that, "when a federal court reviews sufficiency of a complaint, before reception of any evidence either by affidavit or admissions, the issue is not whether the plaintiff will ultimately prevail or is likely to prevail but whether claimant is entitled to offer evidence to support claims." (Scheuer v. Rhodes et al., 416 U.S. 232, 1974) Further, the pleading standard as stated in in Swierkiewicz v. Sorema does not require a statement of evidence at the pleading stage.

In Green vs Francis, the 6th Circuit Court of Appeals affirmed a judgment of liability against law enforcement for "deprivation of plaintiff's right to security" when they failed to investigate or intercede to prevent civil rights violations including violence and intimidation. Holding that no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and

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[1] Ogunsula vs. Holder et al, Case No. GJH-15-1297, United States District Court of Maryland, Opinion, see ECF No. 9, pg. 4, para 2.

unquestionable authority of law. (Green vs Francis 705 F.2d 846 6th Circuit 1983)

Additionally, with regard to the Petitioner's Bowie, Maryland home, Ms. Ogunsula was not seeking an appeal of the State Court's foreclosure proceedings. She was raising constitutional (due process) and civil rights issues with the administration of the legal process that divested her of her property interests. She believed that she had a factual claim regarding the action of certain state and private actors. Further she was asking the District Court to take jurisdiction over these constitutional and civil rights issues. These specific issues do not conflict with the Rooker-Feldman doctrine. According to Exxon Mobil vs. Saudi Basic Industries Corp., "If a federal plaintiff `present[s][an] independent claim,'" it is not an impediment to the exercise of federal jurisdiction that the "same or a related question" was earlier aired between the parties in state court. (See Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 2005),

U.S. C. 28 § 1915 (e) (2) (b) (ii) vs Rule 12 (b) (6)

The standard of review for dismissal for failure to state a claim on which relief can be granted under Rule 12 is: This court accepts as true the facts alleged in the complaint, views them in the light most favorable to the plaintiff, and recognizes that dismissal is inappropriate "unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of [her] claim." (See Hishon v. King & Spalding, 467 U.S. 69, 1984) (explaining that dismissal for failure to state a claim is proper "only if

it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations").

Further, a Rule 12(b) (6) motion affords a plaintiffs certain procedural protections such as, notice and the opportunity to amend a complaint before the court rules on the motion, the U.S. Supreme Court has noted. (See Neitzke v. Williams, 490 U.S. 319, 329–30, 109, 1989).

So then, it is evident that under Rule 12 (b) (6) the entire complaint should not have been dismissed with prejudice without notice when the Court stated that only one of its claims was frivolous. With notice, the plaintiff could have responded to the Court regarding the retaliation claims and requested leave to amend the complaint. Also, the plaintiff could have also provided a rebuttal regarding the Court's dismissal of some claims based on the statute of limitations defense. The District Court could not tell from the face of the complaint whether there may be some meritorious tolling argument(s) against the statute of limitations defense. Claim No. 8 in the original complaint, as it relates to the denial of a federal benefit by the Department of Social Services of Prince George's County, Maryland, is not time barred. Claim No. 5 related to the tuberculosis test is also not time barred as the incident was reported to federal law enforcement in 2012. Claim No. 4 is not time barred based on the discovery of potential evidence of the furtherance of a conspiracy in 2014. Count No. 14 is based on events that took place in 2014. With notice from the Court and an opportunity to amend, a decision can be made on the merits of a complaint and

the plaintiff is given the opportunity to plead his/her best case.

Further District Court's decision squarely conflicts with Abbas vs. Dixon and with case law of the First, Second, Fourth, Seventh, Ninth, and Eleventh Circuits regarding sua sponte dismissals without giving notice and a chance to amend an in forma pauperis complaint/claim that is not frivolous or malicious and "fails to state a claim on which relief may be granted". (See Abbas vs. Dixon, 480 F.3d 636 2d)

The Ninth Circuit has interpreted the final form of dismissal under the [in forma pauperis] statute, failure to state a claim upon which relief may be granted, to be essentially synonymous with a Federal Rules of Civil Procedure 12(b) (6) dismissal. The Second Circuit agrees. The Fourth Circuit as well as other Circuits review pro se and in forma pauperis cases dismissed for "failure to state a claim..." according to the procedures under Rule 12 (b) (6). And Neitzke v. Williams provided even greater clarity by stating that the claims dismissed under the "fails to state a claim..." clause are not necessarily frivolous. These are two distinct categories under Section 1915.

In Abbas vs Dixon et al. where the District Court dismissed the Abbas' in forma pauperis complaint for "failure to state a claim...", the Second Circuit of Appeals said the following:

Although section 1915A grants courts the authority to dismiss a complaint with prejudice, nothing in sections 1915 and 1915A alters "[t]he settled rule ... that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the

plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (McEachin v. McGuinnis, 357 F.3d 197, 200, 2nd Circuit, 2004, internal quotations omitted).

The Second Circuit opinion went on to say that "providing a plaintiff with notice and an opportunity to be heard is often necessary to establish the fairness and reliability of a dismissal." (See Snider v. Melindez, 199 F.3d 108, 113, 2d Cir.1999). This is also echoed in the 9th Circuit's Lopez v. Smith case. Lugo vs Keane stated that: ,

No principle is more fundamental to our system of judicial administration than that a person is entitled to notice before adverse judicial action is taken against him. See generally Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 707, 108 S.Ct. 2104, 2112, 100 L.Ed.2d 722 (1988) (due process requires notice of pendency of action and opportunity to be heard) (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)). See also Fed.R.Civ.P. 7(b) (1) (motions generally required to be on notice);

Even the Fourth Circuit in Ostrzenski v. Seigel, also agreed with this point of law. It said quoting the Federal Practice and Procedure § 1357:

A dismissal under Rule 12(b) (6) generally is not final or on the merits and the court normally will give plaintiff leave to file an amended complaint. The federal rule policy of deciding cases on the basis of the substantive rights involved rather than on technicalities requires that plaintiff be given every opportunity to cure a formal defect in his pleading. This is true even though the court doubts that

plaintiff will be able to overcome the defects in his initial pleading. Amendment should be refused only if it appears to a certainty that plaintiff cannot state a claim. The better practice is to allow at least one amendment regardless of how unpromising the initial pleading appears because except in unusual circumstances it is unlikely that the court will be able to determine conclusively on the face of a defective pleading whether plaintiff actually can state a claim.

In the case at hand, Ogunsula vs. Holder et al., the District Court dismissed the entire complaint sua sponte without prior notice and accorded the plaintiff no opportunity to respond or amend. This puts the pro se plaintiff at a significant disadvantage. According opportunities for responsive pleadings to indigent litigants commensurate to the opportunities accorded similarly situated paying plaintiffs is all the more important because indigent plaintiffs so often proceed pro se and therefore may be less capable of formulating legally competent initial pleadings. (See Haines v. Kerner, 404 U.S. 519, 1972).

In general, sua sponte dismissals of complaints brought in good faith are disfavored. Adequate notice aids the courts in securing a "just determination" by giving the party moved against the opportunity to present their best arguments and response. (Paraphrasing Eades v. Thompson, 823 F.2d 1055, 7th Circuit, 1987) The Second Circuit in Watley vs. Katz, said, "district courts should not dismiss a pro se complaint without giving the plaintiff an opportunity to be heard "unless it is unmistakably clear that the court lacks jurisdiction, or that the complaint lacks merit or is otherwise defective." (Snider v. Melindez, 199 F.3d 108, 2d Cir., 1999). Failure to afford such an

opportunity "may be, `by itself, grounds for reversal.'" (quoting Square D Co. v. Niagara Frontier Tariff Bureau, Inc., 760 F.2d 1347, 2d Cir.,1985) (Friendly, J.)). The 2nd Circuit in Watley provided this admonishment: "District Courts should not dismiss a pro se complaint without giving the plaintiff an opportunity to be heard." (Watley vs Katz, No. 14-3862, 2nd Circuit, 2016)

The First Circuit's case law provides this guidance: "Sua sponte dismissals are strong medicine, and should be dispensed sparingly." (Chute v. Walker, 281 F.3d 314, 319, 1st Cir.2002) (quoting Gonzalez–Gonzalez v. United States, 257 F.3d 31, 33 (1st Cir.2001)) (internal quotation marks omitted). The general rule is that sua sponte dismissals of complaints under Rule 12(b) (6), which is synonymous with the referenced clause under Section 1915 (e), are "erroneous unless the parties have been afforded notice and an opportunity to amend the complaint or otherwise respond." (See Futura Dev. of P.R., Inc. v. Estado Libre Asociado de P.R., 144 F.3d 7, 14, 1st Cir.1998).

The Eleventh Circuit feels strongly about the requirement that notice pleading be afforded to pro se plaintiff and instituted the following:

"...this Court has prohibited sua sponte dismissals under Rule 12(b)(6) where: 1) the defendant had not filed an answer and the plaintiff still had a right to amend his complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure." (See Jefferson Fourteenth Assocs. v. Wometco de P.R., Inc., 695 F.2d 524, 527, 11th Cir.1983).

The Supreme Court in Neitzke v. Williams stated that "unless there is " 'indisputably absent any factual or legal basis' " for the wrong asserted in the complaint, the trial court, "[i]n a close case," should permit the claim to proceed at least to the point where responsive pleadings are required."

Rule 15 (a) directs courts to grant leave to amend "when justice so requires". (See Forman v Davis 371 U.S. 17883, 1962 , and Pangburn vs Culbertson, 200 F.3d 65, 2nd Circuit, 1999) Some courts hold that where a complaint's deficiency could be cured by an amendment, the district court is expected to notify the parties of the opportunity to amend. (Shane v Fauver, 213 F.3d 113, 3rd Circuit, 2000)

The Appellant drafted the original complaint (April 2015) without a considerable view of the law or the Rules of Civil Procedure (FRCP). And while the Appellant is by no means and expert in the law, the FRCP, or the U.S. Court System, she would greatly benefit from the opportunity to amend her original complaint to provide a more concise statement that addresses her specific injuries (as it relates to Article III) and the facts that link some of the defendants to the allegations in the complaint. It is evitable, that some defendants may be dismissed or some claims may be dismissed or dropped from the complaint, but the notice and opportunity to respond to the Court will result in a more just determination of the adequacy of the plaintiff's claims.

Summary

The original purpose of the in forma pauperis statute was to put complainant who could not pay court fees on equal footing with those who could afford to bring law suits. Justice Marshall stated in Neitzke vs Williams that the statute's overarching goal intended by Congress was to make the courts accessible to all litigants and give "equality of consideration for all litigants". (Neitzke v. Williams, 490 U.S. 319, 1989) This purpose is juxtapose with the two realities that most in forma paurperis complainants are pro se and have very little knowledge of the law or judicial procedure. However, they must author a complaint that presents their claims in a manner that states that they have been wronged and these are the laws that provide them an opportunity for relief. The court then also has a formidable task of determining whether or not the laws the complainants have stated offer them a means of relief for their alleged wrongs. This Petitioner believes that it is most difficult for the pro se plaintiff. Such was the case for this Petitioner. Opportunity to amend the Petitioner's complaint is in the interest of justice.

CONCLUSION

For the foregoing reasons, the Petitioner is requesting the U.S. Supreme Court grant this Petition For Writ of Certiorari.

Dated: September 24, 2019

Respectfully submitted,

Veronica W. Ogunsula

Veronica W. Ogunsula, Pro Se

APPENDICES

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