

19-5798

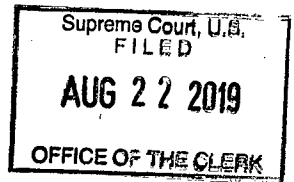
ORIGINAL

No. 18A1194

IN THE

SUPREME COURT OF THE UNITED STATES

(1st Cir. Appeal No: 18-1534)



Lonnie B. Davis

— PETITIONER

(Your Name)

vs.

Bushnellcock, My First Funds Account RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The First Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

⇔ 14880-057 ⇔

Lonnie B Davis
Insitution Butner 2
2 OLD 75 HWY
Federal Correctional
Butner, NC 27509
United States

(Address)

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Did plaintiff have a right to sue while as a prisoner for reasons other than his conditions of his confinement?
- 2) Did Federal court render fundamentally fair or disparate treatment when deciding prisoner's cause concerning issues other than his conditions of his confinement?
- 3) Did inmate as beneficiary have same constitutional rights as a "free person"?
- 4) Did USDC or (4th Cir.) make errors that affected petitioner's constitutional rights and as a result he was unable to prove he had a ~~non-frivolous~~ claim?
- 5) Did USDC biasly decide prisoner's lawsuit against Sohn Hancock Mutual Fund Accounts that violated his due process Warranting Petition of Certiorari To The Supreme Court Of The United States?
- 6) Did (1st Cir.) prejudice plaintiff's rights when they proceeded on or after September 14, 2018 contrary to their order entered 8/29/18? Petitioner had already petitioned (1st Cir.) on 8/02/18 to stay Appeal pending en banc rehearing, which coincidentally was decided the same day 8/02/18 denied and also was petitioner prejudiced when they did not grant plaintiff's motion to withdraw in their 8/29/18 order, but instead (1st Cir.) dismissed the appeal pursuant to Rule 12(b)(6) other than the timely requested withdrawal of appeal pursuant to Fed. R. App. 42(b)?

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:

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APPENDIX E *Appellant's Motion For Expedient Response; To Stay Appeal Or Withdraw Appeal
(8/02/18 submitted)*

APPENDIX F *(1st Cir.) Order 8/02/18*

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Pruell vs. Caritas Christi</i> , 678 F.3d 10,14 (1 st Cir. 2012)	
<i>Cavallaro vs. Unum Health Insurance Inc.</i> , 678 F.3d 1,10 (1 st Cir. 2012)	
<i>Nat'l Rifle Ass'n of Am. vs. Magaw</i> , 132 F.3d 272,282 (6 th Cir. 1997)	
<i>Brown</i> , 763 F.2d at 801	
<i>Abbott Labs vs. Gardner</i> 387 U.S. 136,148; 87 S.Ct. 1507 (1967)	
<i>Thomas vs. Union Carbide Agric Prods. Co.</i> , 473 U.S. 568,580; 105 S.Ct. 3325	
<i>Franks vs. Ross</i> , 313 F.3d 184 (2012)	

STATUTES AND RULES

28 USC § 1291

OTHER

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 B to the petition and is

- ☐ reported at U.S. Court of Appeals (1st Cir.); 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 _____ to the petition and is

- ☐ reported at USDC-MA ~~62-111~~; 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 January 16, 2019.

☐ 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: August 2, 2018, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including August 22, 2019 (date) on May 21, 2019 (date) in Application No. 18 A 1194.

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

Considerations Governing Review On Certiorari (Rule 10)

The First Circuit has entered decision in *Fomen vs. Davis*, 371 U.S. 178 (1st Cir. 1962) where there were inconsistency with the spirit of the federal rules where USDC abuses its discretion and contrary see *Wal-Mart Stores, Inc. vs. Duke* 131 S.Ct. 2541 (2011) where appellate court found USDC denial was based on erroneous interpretation of law along with lower failing to cite any case to support their decision and Appellate Court to affirm such behavior was an abuse of discretion. Of course the USDC was not wholly free from error. See *Feldman vs. Law Enforcement Associations Corp.*, 752 F.3d 339, held that even when a USDC lacks jurisdiction over a claim at the time of original filing a supplemental complaint may cure the defect obviating the subsequent facts which eliminates the jurisdictional bar.

Review On Certiorari: Time For Petitioning (Rule 13)

This is a timely submitted petition within 90 days plus the extended 60 days from entry ordering dismissal.

Contents Of Petition For Writ Of Certiorari (Rule 14)

was submitted in good faith to the best of my knowledge without unnecessary detail.

STATEMENT OF THE CASE

Now comes Lorraine B. Davis-prose petition for writ of Certiorari to Supreme

Court of the United States for due process violation and bias discrimination to him as being prisoner with a lawsuit otherwise his condition of confinement. On May 15, 2018

USDC-MA dismissed the FOIA lawsuit asserting the complaint fails to state a claim upon which relief may be granted. On June 4, 2018 Motion to Amend pursuant to Rule 15(b)

and Motion for Relief from Judgment pursuant Rule 60(b) was filed in USDC-MA and on July 3, 2018 the cause dismissed for simply not enough alleged to give rise to a

plausible claim for relief in federal court. On July 9, 2018 Motion to Stay Appeal pending Appellant's Petition for Rehearing En Banc was filed in (9th Cir) and on 7/19/18 the

en banc rehearing was filed with a certificate of service dated 7/09/18. The en banc rehearing was denied by (1st Cir) August 2, 2018 and Summary Disposition was filed by Appellee 8/09/18 but

they (Appellees) failed to send appellant a copy of this petition. Appellant had to request (9th Cir) Clerk to expediently forward him a copy of the pleading on his appeal would be dismissed for

lack of prosecution by or before September 14, 2018. Appellant had already petitioned (9th Cir) on August 2, 2018 coincidentally to stay appeal pending en banc rehearing which was decided

the same day (8/02/18) denied, but they refrained from deciding Appellant's 8/09/18 alternative motion to withdraw appeal without further obligation due to not rendering an antecedent

initial en banc rehearing which Appellant assets frustrated and prejudiced his cause. Petitioner was denied on every occasion Motion for Appointment of Counsel pursuant to Non-Criminal Justice Act

(CJA) 18 USC § 3006A asserting his position as a beneficiary to his late father's estate that coincided with this mutual fund account and needed legal assistance to re-open estate that coincided with this

cause. Furthermore, Appellant's failure to provide a summary of law to the court to appoint him counsel since he could not

in the interest of justice for the delay caused by Appellee's failure to provide a summary of law to the court. After the delay caused by Appellee's failure to provide a summary of law to

disposition for summary Disposition perfunctorily. Consequently (1st Cir) remained disposed for summary Disposition without appeal and affirmed USDC's

transcending Appellant's Motion to Alter/Amend/Withdraw Appeal on 8/02/18 allowed the cause to proceed as a result on January 16, 2019 they dismissed appeal and affirmed USDC's

to which Appellees requested sections. On January 29, 2019 Appellant submitted a reconsideration

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(2)

Legal prejudice resulted also in the dismissal of plaintiff's Rule 60(b) as it was unfair to plaintiff for USDC to not reopen to retain jurisdiction. Also, generally a claim may not be adjudicated on its merits unless it is ripe. See, N. 17 Rifle Ass'n of Am. vs. Masau, 132 F.3d 272, 282 (6th Cir. 1997). Petitioner asserts ~~his~~ was not ever allowed to ripen further for judicial resolution desirable under all of the circumstance; See Brown, 763 F.2d at 801 and, if so, the degree of "hardship to the parties if judicial relief is denied" before the claim is allowed to ripen. The application of the "ripeness doctrine" exist to prevent the courts through premature adjudication from entangling themselves in abstract disagreements that the Court was in exercising its discretion. ~~Quoting~~ Abbott Cabs vs. Gardner, 387 U.S. 136, 148, 87 S.Ct. 1507 (1967) See also Thomas vs. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580, 105 S.Ct. 3325. USDC-MA did not apply the "ripeness doctrine" and (1st Cir.) did not review for the standard when plaintiff petitioned to amend and Appellate should have reversed for USDC failing to sua sponte grant an opportunity amend this overlooked important precedent prejudice plaintiff and disadvantage him. Petitioner asserts he has been arbitrarily treated by USDC-MA because of being an incarcerated person and they intentionally applied a legal standard that would not allow him to sue. Their standard violated Davis' due process as him being a prisoner suing for other than his conditions of his confinement. They were provided enough information sufficient to determine him as a prisoner beneficiary to John Hancock Mutual Fund accounts and the pleader's short and plain statement should have been liberally construed to allow amendment in keeping an appropriate mechanism for curing any defects. See Franks vs. Ross, 313 F.3d 184 (2012). Petitioner in this case received disparate treatment from lower courts that was fundamentally unfair that ~~affected~~ petitioners' constitution right where he was unable to prove he had a non-frivolous claim.

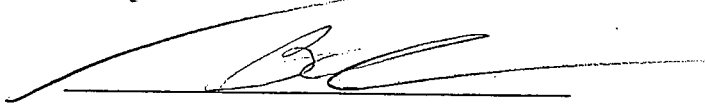
REASONS FOR GRANTING THE PETITION

USDC and Appellate Court did not dismiss nor affirm with a legal justiciable standard that makes the facts alleged by the petitioner adequate or inadequate to state a claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Date: August 31, 2019