

ORIGINAL

19-6263

IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S.  
FILED

OCT 01 2019

OFFICE OF THE CLERK

Velasquez

v.

State of Utah,

Utah Dept. of Human Services,

Utah Division of Aging and Adult

Services/APS,

Utah Office of Legislative Research and

General Counsel

Supreme Court Case: 19A227

Court of Appeals Case: 19-4041

District Court Case: 2:18-cv-00728-DN

(D. Utah)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner requests leave to proceed *in forma pauperis*, to have filed the petition for *Writ of Certiorari* without the pre-payment of fees by 28 U.S. § 1915. The petitioner expects a successful conclusion, and fees may be taxed accordingly.

This is a supervisory petition for *writ of certiorari*, interested the case may find speedy remand to Court of Appeals for rehearing on the correct documentation, repair

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SUPREME COURT, U.S.

of the trial court's failure at summons, and generally hold the outstanding merits questions to this case which have not been anywhere respect as raised by the petitioner.

## BACKGROUND

Petitioner is self-represented in a civil matter which has been restricted from proceeding by actions held demonstrated as "Fraud on the Court," by Fed. R. Civ. P. 60(d)(3),<sup>1</sup> that termination of the case followed a direct failure of a Magistrate Judge to treat promptly (Fed. R. Civ. P. 72) a Motion for Summons, that the Judge presiding on a Motion to Vacate the Magistrate Judge terminated the case and fabricated a cause for dismissal.

On appeal, the District Court Judge objected to sustained IFP standing,<sup>2</sup> that an appeal was in bad faith, and on termination from the Court of Appeals, the appellate panel had not evaluated "Fraud on the Court" as it respected both an IFP motion and a Motion to Conclude abatement, that the present matter is yet a petition for a supervisory convention by United States Supreme Court to compel rehearing of the very same matter on papers filed/served already in that immediate lower court.

The Court of Appeals did not grant IFP status, but affirmed it was declined by 28 U.S. § 1915(3), while the same question was evaluated irrespectively.

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<sup>1</sup> Addenda, IFP Motion in Court of Appeals, Page 019-025.

<sup>2</sup> *Id.*, Page 010.

The original order granting IFP status is appended.<sup>3</sup> The petitioner's financial situation has changed, however the costs of printing, mailing, and of the court's fee still exceed 25% of his monthly income and are prohibitive to a timely filing in a case made urgent by compounding actions of "Fraud."

### REASONS GRANTING THE MOTION

Moreover, it is as mandatory because the supervisory convention by Sup. Ct. R. 10 must evaluate the procedural failure (Fed. R. Civ. P. 60(d)(3)), for any reason to *void* an opinion in the District Court as from the Court of Appeals, all those opinions prohibiting the appeal, IFP standing thereby, any kind of prohibitive 28 U.S. § 1915 claim, are deliberately *Set Aside* before rehearing.

For the foregoing reasoning and improvement of the case' tangible precedent, the Supreme Court may evaluate issue on this motion directly beside the evaluation of the petition for *Writ of Certiorari*, in view that this case be submitted immediately for a decision requiring remand to United States Court of Appeals for rehearing by Fed. R. App. P. 21, questions defining mandatory recusal of Judges.

Additionally, Appellate Form 4 is appended.<sup>4</sup>

IFP Motion in Court of Appeals is appended, and demonstrates "Fraud on the Court" precedence.<sup>5</sup>

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<sup>3</sup> *Id.*, 008.

<sup>4</sup> *Id.*, Page 001.

<sup>5</sup> *Id.*, Page 013.

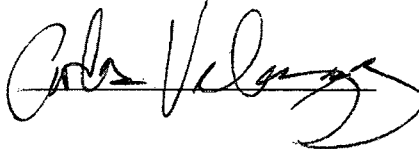
Otherwise, the court's fee exceeds the appellant's present holdings after costs for printing and mailing.

#### NOTES

1. This appeal was treated by Fed. R. App. P. 24 (c), that *in forma pauperis* proceedings may "[be] heard on the original record without reproducing any part." A Failure to uphold the original IFP standing by the District Court imperils the original power as expressed on the already filed and served *mandamus* petition by "Fraud on the Court," and constitutes yet another obvious compounding of a fraudulent exercise of the court's procedural powers.

As respectfully signed,

Appellant Carlos Velasquez, *pro se*

A handwritten signature in black ink, appearing to read 'Carlos Velasquez', written over a horizontal line.

Date: 9/26/19

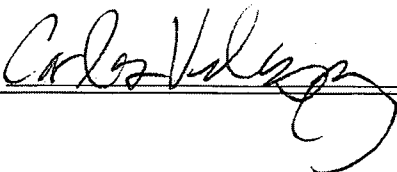
# ADDENDA

**AFFIDAVIT ACCOMPANYING MOTION  
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

**Affidavit in Support of Motion**

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: \_\_\_\_\_



**Instructions**

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: \_\_\_\_\_

9/26/19

My issues on appeal are: Fed. R. Civ. P. 60(d)(3), "Fraud on the Court" claim was left untreated by Court of Appeals. A form of claim preclusion is not justiciable and appears to cover for the deliberate failure by the trial court magistrate to issue a summons, hold a hearing to consider pre-trial questions.

"Fraud on the Court," may be tangibly compounded; the trial court issued a statement the Appeal was in Bad Faith, and Court of Appeals subsequently affirmed without having recognized the petitioner's original constitutional question as withstanding, that rulings had failed to address the question, and judges apparently were not interested to read, or demonstrate having read, the petitioner then prejudicially terminating the case at 28 U.S. § 1915.

Case argument generally holds that Judges misrepresented the case, whole and apparent misprision, and that there is not grounds to terminate on the IFP statute because the procedural bar question (*Rooker-Feldman*) is neither based on material available in the trial court, nor defined by parties served process but not summoned.

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$1200	\$	\$ 1200	\$
Self-employment	\$ 0	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
<b>Total monthly income:</b>	<b>\$1200</b>	<b>\$</b>	<b>\$ 1200</b>	<b>\$</b>

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Amazon, LLC.	202 Westlake Ave N, Seattle WA 98109	10/1/18-Present	\$1200
Salt Lake City Corporation	1965 W 500 S, Salt Lake City, UT 84104	9/20/15-10/1/18	\$1200
			\$

3. List your spouse's employment history for the past two years, most recent employer first.  
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$100

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
American United Credit Union	Checking/Savings	\$100	\$
		\$	\$
		\$	\$

*If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.*

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:



<b>Motor vehicle #2</b>	<b>Other assets</b>	<b>Other assets</b>
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

<b>Person owing you or your spouse money</b>	<b>Amount owed to you</b>	<b>Amount owed to your spouse</b>
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

<b>Name [or, if under 18, initials only]</b>	<b>Relationship</b>	<b>Age</b>

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	<b>You</b>	<b>Your Spouse</b>
Rent or home-mortgage payment (include lot rented for mobile home)	\$	\$
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Utilities (electricity, heating fuel, water, sewer, and telephone)	\$70	\$
Home maintenance (repairs and upkeep)	\$50	\$
Food	\$200	\$
Clothing	\$0-150	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation (not including motor vehicle payments)	\$120	\$
Recreation, entertainment, newspapers, magazines, etc.	\$75-150	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$170	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$260	\$
Credit card (name): Amazon Visa (Chase)	\$50	\$
Department store (name): Macy's AMEX	\$50	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
<b>Total monthly expenses:</b>	<b>\$1045(min)</b>	<b>\$</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* ☐ Yes ☒ No

*If yes, how much?* \$ \_\_\_\_\_

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

This is a "Fraud on the Court" claim while a case is being suppressed pre-trial. Costs are frivolous so long as the appeal can be held as frivolous, or at least generally arbitrary that the court must operate anyway.

There are no other significant reasons why costs tend to exceed petitioner's regular savings.

12. *State the city and state of your legal residence.*

Salt Lake City, UT

*Your daytime phone number:* 8016710361

*Your age:* 35 *Your years of schooling:* 4

*Last four digits of your social-security number:* 5171



FILED  
U.S. DISTRICT COURT

# United States District Court

2018 SEP 18 P 1:54

District of Utah

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

## ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Carlos Velasquez

v.

State of Utah et al

Case Number: 2:18-cv-00728-DN

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:



GRANTED.



DENIED, for the following reasons:

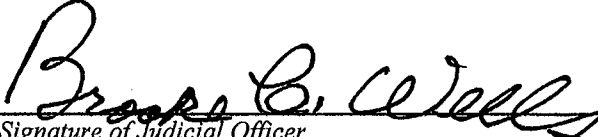
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18

day of

Sept.

, 2018

  
Signature of Judicial Officer

Brooke C. Wells, U.S. Magistrate Judge  
Name and Title of Judicial Officer



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ,  
Plaintiff,

v.

STATE OF UTAH, et al.,  
Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO  
APPEAL IN FORMA PAUPERIS**

Case No. 2:18-cv-00728-DN

District Judge David Nuffer

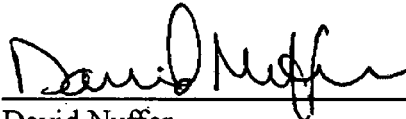
Plaintiff Carlos Velasquez has filed a motion (“Motion”)<sup>1</sup> to appeal in forma pauperis the (1) Memorandum Decision and Order of Dismissal,<sup>2</sup> (2) Judgment in a Civil Case,<sup>3</sup> and (3) Memorandum Decision and Order Denying Motion for Reconsideration.<sup>4</sup>

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”<sup>5</sup>

Velasquez’s appeal presents no substantial question for review, and there is no reasonable basis for his claims of error. Therefore, it is hereby certified that the appeal is not taken in good faith, and it is hereby ordered that the Motion is DENIED.

Signed March 28, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

<sup>1</sup> Motion to Proceed in Forma Pauperis on Appeal to the United States Court of Appeals, docket no. 34, filed under seal March 21, 2019; *see* Notice of Appeal, docket no. 33, filed March 20, 2019.

<sup>2</sup> Docket no. 27, filed February 25, 2019.

<sup>3</sup> Docket no. 28, filed February 25, 2019.

<sup>4</sup> Docket no. 31, filed March 12, 2019.

<sup>5</sup> 28 U.S.C. § 1915(a)(3).





Carlos Velasquez, plaintiff

Email: [cfv1983@gmail.com](mailto:cfv1983@gmail.com)

Tel: 801.671.0361

IN THE UNITED STATES COURT OF APPEALS  
for the TENTH CIRCUIT

Velasquez v. State of Utah, <i>et al.</i>	Case No. 19-4041  (D.C. No. 2:18-CV-00728-DN  (D. Utah)
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1 AMENDED MOTION TO PROCEED *in forma pauperis*

2 This motion is amended after rejection by clerk. It is recapitulated the same  
3 motion, and the Court of Appeals Financial Declaration is appended. This motion  
4 is counted less than 2500 words by Microsoft Word.

5 The plaintiff is not incarcerated.

6 The motion is recognizable in three different expressions;

7 (1) The appeal coerced to frivolousness, the court plainly has the jurisdiction;  
8 the efficient time frame is now damaged for an otherwise unnecessary  
9 appeal, as cited from instances of Fed. R. Civ. P. 60(d)(3).

1 (2)IFP standing is grantable on a demonstration of personal financial

2 limitations, as necessary for Due Process, under 28 U.S. § 1915(1), at the  
3 discretion of the court;

4 (3)The plaintiff had IFP standing in the District Court; the 28 U.S. § 1915(3)  
5 certification was itself in bad faith, that it was grantable on conclusion of  
6 abatement at the same merits final decision and jurisdictional evaluations  
7 may be evaluated (as somewhat separate from the basic conditions of the  
8 appeal).

9 I, Carlos Velasquez, the petitioner/appellant in the captioned case move this  
10 court for leave to proceed in forma pauperis.

11 In support of this motion, I state that because of my relative poverty, I am  
12 unable to pay the costs of said proceedings or give security therefor, I submit this  
13 motion and the following financial declaration.

14  
15 **BACKGROUND**

16 The case was commenced in District Court with filing and service on  
17 9/14/18; a summons was not served at the time of service of a petition for *Writ of*  
18 *Certiorari*, and a Magistrate Judge did not recognize a motion to that end when it

1 was filed. The case presence before the COA is subsequent of whatever cause  
2 defined the interest as it was held by the Magistrate and expressed by the Judge  
3 referring.

4 Because, on the Direct Motion to Conclude Abatement, wherefrom the  
5 abatement was lifted, the reason stated for the efficient terms of granting relief  
6 from the judgment was a an act fraud, Fed. R. Civ. P. 60(d)(3), a fabrication of the  
7 cause to dismiss after the Magistrate was moved vacated for a failure to exercise  
8 prompt diligence by Fed. R. Civ. P. 72, the District Court terms were challenged to  
9 controversy.

10 The IFP status was grantable, and indeed mandatory, on lifting the  
11 abatement for the cause that the IFP standing should have held, to merit, the  
12 withstanding form as from before a Judge had fabricated a cause for a dispositive  
13 ruling, prior, that the very same questions were at the time of the motion, resolved,  
14 that it were the speediest process to once again find grounds to ask the court to Set  
15 Aside those judgments and opinions wherever the plaintiff cannot find his consent

16 The plaintiff presently holds the Proposed Order was likely not issued  
17 because the power to Set Aside a judgment on review for fraud is limited while the  
18 conditions of an abatement are imposed, than to consider it was barred 28 U.S. §  
19 2105.

1       The most efficient expression of this case standard should have ordered  
2   those decisions Set Aside, granted the IFP standing to the petitioner as though it  
3   were the same, as withholding disposition and effectively expressing that  
4   dispositive condition were stayed at the plausibility of the claims of “Fraud on the  
5   court,” and not merely the viability of an appeal.

6       The plaintiff’s case promotes the holding that 28 U.S. § 1915(3) is  
7   unconstitutional without provided a standard of review efficient to the original case  
8   proceedings; the Court entertains too much the deliberations of the faithful agent  
9   while it must embody faith itself. Consider that any number of violations of civil  
10   right are vulnerable to abuse of discretion of discrete counter-provisionalism, that a  
11   Judge *may* use such standard *because* he/she may feel he embodies the same effect  
12   of sheer *potential*. As anti-federalism, it is late and post-colonial *toreyism*, and  
13   misprizes moral fabric as of any populism.

14       It is, therefore, unconstitutional. A counter-provisional influence of late anti-  
15   federalism demerits the provisional influence of the Court of Appeals by just a  
16   scintilla more than each procedural instance where the Judge has been alleged to  
17   have expressed a fraud in terminating the case.

1 The statute, moreover, as supplementary, is interlocutory as well, of  
2 statutory command, and would appear to affirm *res judicata* prior to the terms of  
3 its efficient review; the *Ceske v. Edwards* (164 F.3d 396 (7<sup>th</sup> Cir. 1999) has  
4 resolved most of these questions, and the tenth circuit holds it was adopted on  
5 *Rhodes v. True* (10<sup>th</sup> Cir. 1999).

6 Both instances feature Judicial Review at the question that an appeal was  
7 taken in bad faith, usually upon the principal of the uniformity of the petition, held  
8 at this citation of cause by Fed. R. Civ. P. 60(d)(3), a consideration which should  
9 be reviewed in due sequence when it is presented. That it could effectively reverse  
10 a judgment prematurely, or have it expressed, should be the precise implication of  
11 the COA presence to the District Court on a claim of Fraud.

12 The failure to treat the complex motion, than having read it as simple  
13 compels the questions should not be reviewed as an entanglement; that *reversal* is  
14 not subsequent, or even premature while parties in opposition may find themselves  
15 at the same similar prejudice, or that it was premature. The court refraining too  
16 much from expressing either its reservations or efficient prejudices is, resultant, not  
17 impartial by the United States Constitution, but by any allegiance or disposition  
18 errant upon the court.

1 In either respect, it cannot sustain 'good faith' in constitution by failing to  
2 generate any statement which must be due in view that argument and evidence was  
3 presented efficient to Set Aside those errant judgments of the District Court while  
4 the appeal was taken. Promoted, rather, is independence of the petitioner to any  
5 merit of his documentation, and if at any point the court has followed suit, its  
6 sensibility of Judicial Independence shall have deviated from oath and enlarged  
7 itself as if to constrain, than to meet, the petitioner.

8 The court must always meet the argument wherever it is not plainly  
9 resolved; whether it should demand strong precedent of *stare decisis*, follow a  
10 rational basis argument, or presume and apply the law.

11 Such is the result of a lacking disposition of argument, motions, the  
12 proposed order, and continues the same enlargement provoked by the failures of  
13 the Magistrate Judge. It is First Amendment crisis in view of Article VI, sustained  
14 only by the fact that the petitioner continues to live and retain employment enough  
15 at least pay for his own clerical services.

16  
17 A FINANCIAL AFFIDAVIT

18 The plaintiff holds less than \$100 in his present bank account.

1 The plaintiff has had recent automobile expenses; the engine on his 2001  
2 Ford Focus seized on 4/1/19. The plaintiff subsequently sold the vehicle and  
3 entered into a new contract with a Loan provider for the automobile dealership.

4 His monthly expenses are the following: \$900/mo.

5 Recurrent Expenses

6 \$140/mo. Auto Insurance.

7 \$120/mo. Telephone.

8 \$300/mo. Food/Gas/Lodging expenses.

9 Debts

10 \$70/mo. Min. Payments on Two Credit Cards.

11 \$260/mo. Auto-loan. Of a \$14000 loan.

12

13 The plaintiff earns between \$1000 and \$1250 for each month. Two recent  
14 pay stubs are appended.

15 A cash asset of \$850 is exhausted beside the automobile loan.

16 The court should not burden him to the acquisition of any further debt.

1 While there is time that the plaintiff could conceivably save \$505 dollars, the  
2 demand is transgressive to the original spirit of this case, and the most efficient  
3 time frame for remand. It is also possible the constraint would tax him to  
4 limitations.

5 The plaintiff has not alternative income sources.

6

7 IFP WAS GRANTABLE ON ABATEMENT

8 Because that discourse from the court on the question of abatement appears  
9 to have limited the question of immediate entanglement with a fraudulent action,  
10 that IFP preclusion was expressed refuted as an interlocutory interest than of mere  
11 supplementary interest, in the similar movement to conclude a period of abatement  
12 and so lift it.

13 The organizational interests of the court were misused should not grant it  
14 was precluded where the interest was originally granted, and the 28 U.S. §1915(3)  
15 certification was expressed itself in bad faith, the measure so followed where that  
16 motion was in view from the District Court, and would in fact have substantiated a  
17 merits-basis for the 28 U.S. § 1915(1) provision.

18



1 SUPPLEMENTARY STATEMENT ON AMEND OF THE MOTION

2 Has the Court of Appeals for the Tenth Circuit not made an error upon  
3 failing to sustain to the petitioner IFP standing in view of statements evaluating  
4 Fed. R. Civ. P. 60(d)(3), that a Fraud was committed on the action by the court?

5 The question of the supplemented jurisdiction to the Court of Appeals from  
6 the District Court on the question of appeal, that it was or was not in bad faith, on  
7 the terminology of the IFP statute, lacked Due Process in this instance.

8 While it must not be very common that a Judge outright abuses discretion to  
9 dismiss a case, the conditions of a question of a ruling issued in Bad Faith, as  
10 falsifying a conclusion or statement of review cannot claim but to be too much  
11 prejudiced against the decision.

12 That there lacks a better controlling statutory interest in terms of 42 U.S. §  
13 1915 (3), threatened to disposition the plaintiff at the liability of a cost of fees  
14 while it was held expressed, and demonstrated to a limited extent, that the court  
15 had not conducted the process required, the case dismiss *sua sponte*, prematurely  
16 while a separate Judicial Officer had not done the original diligence required.

1 The case was obviously an inconvenience to the Judge, and found expressed  
2 in the microcosm of Judicial Review a whole separate condition of the very same  
3 parameters the plaintiff challenges in the State of Utah.

4 That there is a general IFP statute permits some ambiguity to the  
5 terminology of the District Court's supplementary jurisdiction, and an  
6 interlocutory jurisdiction as provided. The plaintiff should not suffer that, and on  
7 any question of the certificate of appealability, whereon the most general  
8 jurisdiction of the Court of Appeals is invoked, it was inappropriate to sustain  
9 denied the same IFP standing while only proving a Jurisdictional evaluation while  
10 a most general First Amendment question was being attacked.

11 The only two possible conventions on § 1915(3) is that an appeal is in bad  
12 faith, or that it is not. That an interlocutory decision should not be reviewed<sup>1</sup> in the  
13 same breath the supplementary jurisdiction of the District Court is as revoked fails  
14 to guarantee an even expression of the court's pre-trial interests.

15 It was far better in order to grant the IFP standing while the Fed. R. Civ. P.  
16 60(d)(3) claim was substantiated on the Notice of Appeal without motion, or on the  
17 plaintiff's affirmative statement of the condition.

---

<sup>1</sup> 28 U.S. § 1291.

1 A proper supplementary question results of a final judgment; the Judge has  
2 essentially supplemented a case standard for dismissal of incomplete claims, and  
3 *Rooker-Feldman* barred claims which is challenged as without having sustained  
4 the First Amendment interest of the right of redress, that is, it has fabricated  
5 interest and coverts the disposition from within that District Court under the  
6 general structure of the separate courts' administration, its principal formal  
7 separability, between the District Courts and the Court of Appeals.

8 Additionally, the action of Set Aside on a judgment as prescribed by the rule  
9 is not reversal, although it is the expressed relief from the judgment.

10 The reversal could be expressed without a statement on the merits, and pre-  
11 empt the process of submitting a new motion, and the conditions of a dispositive  
12 expression of fraud would not be expressed upon the plaintiff within the purview  
13 of the Court of Appeals.

14 Moreover, it should not require a separate motion in these circumstances; (1)  
15 The Fed. R. Civ. P. 60 (d)(3) claim is at least substantive on its face; (2) The  
16 appeal is certifiable or reviewable; (3) the case does not appear to have received  
17 full treatment, or is demonstrated unusually dispositioned (as lacking responses  
18 from parties, judiciary, is run on time, any complaint is not dispositioned).

1 The general standing § 1915 (3) certifications appears to stand entirely on  
2 merits of the substantive case, as in order to revoke a privilege already afforded, or  
3 not due, and there is substantive room by Fed. R. Civ. P. 60(d)(3) to Set Aside, and  
4 either later affirm, or submit the reversal.

5 The Court of Appeals is already capable to evaluate the appealability of a  
6 decision by a case standard; the Judge of the District Court in the State of Utah, in  
7 this case, has rather supplemented the pre-trial test of process to the Court of  
8 Appeals, as on a “Death Knell,” and prejudices the plaintiff too much.

9 The Court of Appeals should have amended its order to lift the abatement in  
10 just such a view, Set Aside those judgments at that time, and granted the petitioner  
11 IFP standing where it was prior granted and then revoked to controversy.

12 Instead, the plaintiff’s First Amendment rights are damaged, imperiled,  
13 revoked, and reduced from efficiency to the very same measure that the Judge has  
14 taken the liberality against the better considerations of law and process.

15 The form of action was available on 28 U.S. § 2201, the comprehensive  
16 direct motion to conclude abatement, and not excluded from jurisdictional form  
17 under 28 U.S. § 1295; the effect and not the form of an administrative adjudication  
18 is the test of justiciability.

1

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## RECCOMENDATIONS

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The plaintiff finds easy to recommend the petition to proceed without the prepayment of the fee is granted; his financial means are substantively constrained that the cost would burden both time and his energies.

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Moreover, the appeal should serve the grounds where the original court lacked the interests of a summons, to hear the pre-trial conditions on a question of *certiorari* before remand, that it should not be overlong nor overly complex.

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The plaintiff's view is that Court of Appeals is beside injunction for a failure to exercise discretion, that the court was executed wrongfully; the discrete interest to a plaintiff, of a First Amendment forum evaluating Article VI standing of a Judge's decision finds that a merits basis of the questions presented to conclude and lift abatement for a general IFP standing is substantive, though not well provisioned. The plaintiff shall presume merits on any order.

SIGNATURE

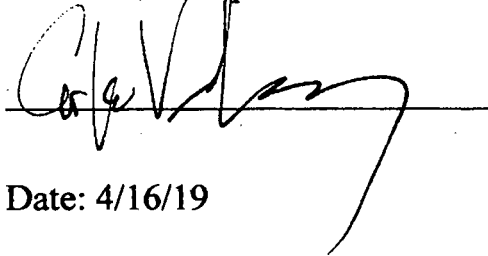
1 I declare under penalty of perjury that the above information is true and understand  
2 that a false statement may result in a dismissal of my claims.

3 In support of this motion, I state that because of my poverty, I am unable to pay the  
4 costs of said proceedings or give security therefor, I submit the following financial  
5 declaration.

6

7 s/Carlos Velasquez

8

A handwritten signature in black ink, appearing to read 'Carlos Velasquez', is written over a horizontal line. The signature is stylized with a large 'C' and 'V'.

9 Date: 4/16/19

10

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

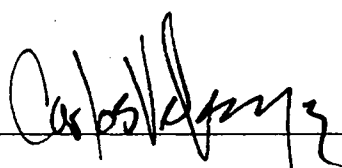
Case No. 19-4041

Plaintiff/Petitioner - Appellant,

v.

Motion for Leave to Proceed  
on Appeal Without  
Prepayment of Costs or Fees  
(non-PLRA)

Defendant/Respondent -  
Appellee.

I, , the petitioner/appellant in the  
captioned case move this court for leave to proceed in forma pauperis.

In support of this motion, I state that because of my poverty, I am unable to pay the  
costs of said proceedings or give security therefor, I submit the following financial  
declaration.

## FINANCIAL DECLARATION

### Affidavit to Accompany Motion for Permission to Appeal in Forma Pauperis

I swear or affirm under penalty of perjury that because of my poverty I am unable to pay the docket fees of my appeal or to post a bond for them. I believe I am entitled to a different result than that reached in the district court.

I further swear or affirm under penalty of perjury that the responses which I have made to the questions and instructions below relating to my ability to pay the fees for my appeal are true.

**Instructions.** Please complete all questions in this application and then sign it on the last page. If the answer to any question is "0" or "none," or the question is "not applicable", so indicate by writing "0", "none", or "not applicable (N/A)". If additional space is needed to answer any question or to explain your answer to any question, please use and attach a separate sheet of paper identified with your name, the docket number of your case and the number of the question.

My issues on appeal are:

Civil Rights Question on Utah Law  
Premature Termination from District Court  
citing Fed. R. Civ. P. 60 (d)(3)

1. Are you or your spouse currently employed? Yes 2 No
2. If you or your spouse are currently employed, state the name and address of your employer, the length of your employment with that employer, and your monthly gross pay. Gross pay is pay before any taxes or other deductions are taken. If you have more than one employer, please provide the information requested below about the other employer(s) on a separate sheet of paper and attach it to this application.

Yourself: Amazon Services, Inc. Your Spouse:



Name and Address of Employer

Name and Address of Employer

202 Westlake Ave N.  
Seattle, WA  
98109

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Length of Employment

Length of Employment

0 6  
 Years Months

\_\_\_\_\_  
 Years Months

Monthly Gross Pay \$ ~ 1250

Monthly Gross Pay \$ \_\_\_\_\_

3. If you are currently unemployed, state the date of your last employment and your monthly gross pay during your last month of employment. Gross pay is pay before any taxes or other deductions are taken.

Date of last employment (Month/Year) for yourself \_\_\_\_\_; spouse \_\_\_\_\_

Monthly gross pay during last month of employment \$ \_\_\_\_\_

4. State whether you or your spouse have received money from any of the following sources during the past twelve months, and, if so, the average monthly amount from that source. Adjust any money that was received weekly, bi-weekly, quarterly, semi-annually, or annually to show the monthly rate.

Did you receive money from any of the following sources during the past 12 months?

Average monthly amount during past 12 months for you and your spouse if applicable.

Amount expected next month

Self-employment

	You	Spouse	You	Spouse
Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____

Income from real property (such as rental income)

Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
--------------	----------	----------	----------	----------

Interest and dividends

Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
--------------	----------	----------	----------	----------

Gifts

Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
--------------	----------	----------	----------	----------

Alimony

Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
--------------	----------	----------	----------	----------

Child Support	Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
Retirement income from sources such as social security, private pensions, annuities, or insurance policies					
	Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
Disability payments such as social security, other state or federal government, or insurance payments	Y/N _____	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	Y/N _____	\$ _____	\$ _____	\$ _____	\$ _____
Public assistance payments such as welfare payments	Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
Other sources of money (specify: _____)	Y/N <u>N</u>	\$ _____	\$ _____	\$ _____	\$ _____
TOTAL			\$ _____	\$ _____	\$ _____

5. State the amount of cash you and your spouse have: \$ ~~~150~~ 0

State below any money you or your spouse have in savings, checking, or other accounts in a bank or other financial institution.

Bank or Other Financial Institution:	Type of Account such as savings, checking, or CD:	Amount you have:	Amount your spouse has:
<del>American First Credit Union</del>		\$ _____	\$ _____
American United Federal Credit Union	Chk/Sav	\$ ~150	\$ _____
		\$ _____	\$ _____

***If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.***

6. State below the assets owned by you and your spouse. **Do not list ordinary household furnishings and clothing.**

<b>Home</b>	Address: _____	Value: \$ _____
	_____	Amount owed on mortgages and
	_____	liens: \$ _____
<b>Other real estate</b>	Address: _____	Value: \$ _____
	_____	Amount owed on mortgages and
	_____	liens: \$ _____
<b>Motor vehicle</b>	Model/Year: <u>Scion IM/2016</u>	Value: \$ <u>~15000</u>
	_____	Amount owed: \$ <u>~15000</u>
<b>Motor vehicle</b>	Model/Year: _____	Value: \$ _____
	_____	Amount owed: \$ _____
<b>Other</b>	Description: _____	Value: \$ _____
	_____	Amount owed: \$ _____

7. State below any person, business, organization, or governmental unit that owes you or your spouse money and the amount that is owed.

Name of Person, Business, or Organization that Owes You or Your Spouse Money	Amount Owed You:	Amount Owed Your Spouse:
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

8. State the individuals who rely on you and your spouse for support. Indicate their relationship to you, their age, and whether they live with you.

Name	Relationship	Age	Does this person live with you?	
_____	_____	_____	Yes _____	No _____
_____	_____	_____	Yes _____	No _____
_____	_____	_____	Yes _____	No _____
_____	_____	_____	Yes _____	No _____

9. Complete this question by estimating the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, bi-weekly, quarterly, semi-annually, or annually to show the monthly rate.

	You	Spouse
Rent or home mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____
Are real estate taxes included? Yes _____ No _____		
Is property insurance included? Yes _____ No _____		
Utilities: Electricity and heating fuel	\$ _____	\$ _____
Water and sewer	\$ _____	\$ _____
Telephone	\$ <u>120</u>	\$ _____
Other <del>None</del> _____	\$ <u>None</u>	\$ _____
Home maintenance (Repairs and upkeep)	\$ <u>20</u>	\$ _____
Food	\$ <u>300</u>	\$ _____
Clothing	\$ <u>50</u>	\$ _____
Laundry and dry cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____

Transportation (not including car payments)	\$ <u>120</u>	\$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ <u>60</u>	\$ _____
Charitable contributions	\$ <u>20</u>	\$ _____
Insurance (not deducted from wages or included in home mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Auto	\$ <u>140</u>	\$ _____
Other _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in home mortgage payments) (specify) _____		\$ _____
Installment payments		
Auto:	\$ <u>160</u>	\$ _____
Credit Card: (name) _____	\$ <u>80-600</u>	\$ _____
Department Store: (name) _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Payments for support of additional dependents not living at your home	\$ _____	\$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other _____	\$ _____	\$ _____
<b>TOTAL MONTHLY EXPENSES</b>	\$ <u>1090</u>	\$ _____

10. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? Yes \_\_\_\_\_ No X

If yes, describe on an attached sheet.

11. Have you spent- or will you be spending- any money for expenses or attorneys fees in connection with this case? Yes X No X

If yes, how much? \$ 20 (Adobe Acrobat Pro) /mo.

\$ 40-200 Other Texts \$ 84 PACER fee

If yes, provide the name, address, and telephone number of the attorney:

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12. Have you promised to pay or do you anticipate paying anyone other than an attorney (such as a paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form? Yes \_\_\_\_\_ No X

If yes, how much? \$ \_\_\_\_\_

If yes, provide the name, address, and telephone number of the person or service:

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13. How much can you pay each month toward the docket fee for your appeal:

\$ 0-1000

14. Please provide any other information that helps to explain why you cannot pay the docket fees for your appeal.

See front Motion, this appeal is coerced without proper treatment in the District Court. It is not the plaintiff's interest, but freedom to it, citing Fed. R. Civ. P. 60(d)(3). This plaintiff is prejudiced hereby.

My finances are originally limited, an immediate payment of any amount would tax me to extremes.

15. State the city and state of your legal residence:

Salt Lake City, UT

Your daytime phone number:

(801) 671-0361

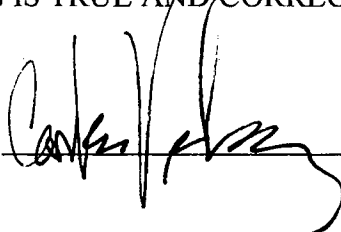
Your age: 35

Years of schooling: 4-6

[Last four digits of] your social security number: 8171

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C. § 1746, 18 U.S.C. § 1621.

Date: 4/16/19

Signature: 

### CERTIFICATE OF SERVICE

I hereby certify that on 4/16/19 I sent a copy of  
[date]  
the foregoing Motion for Leave to Proceed on Appeal without Prepayment of

Costs of Fees, to:

Byron S. White, U.S. Court House, at 1823 Stout St.  
Denver, CO 80257

\_\_\_\_\_, the last known  
address/email address, by mail  
[state method of service]

4/16/19  
Date

[Signature]  
Signature



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**General Docket  
Tenth Circuit Court of Appeals**

**Court of Appeals Docket #:** 19-4041  
**Nature of Suit:** 3899 Other Statutes - APA Review/Appeal  
 Velasquez v. State of Utah, et al  
**Appeal From:** United States District Court for the District of Utah - Salt Lake City  
**Fee Status:** fee due

**Docketed:** 03/22/2019  
**Termed:** 06/11/2019

**Case Type Information:**

- 1) civil
- 2) private
- 3) -

**Originating Court Information:**

**District:** 1088-2 : 2:18-CV-00728-DN

**Trial Judge:** David O. Nuffer, -, U.S. District Judge

**Date Filed:** 09/13/2018

**Date NOA Filed:**

03/20/2019

**Date Rec'd COA:**

03/21/2019

**Prior Cases:**

None

**Current Cases:**

None

**Panel Assignment:** Not available

CARLOS VELASQUEZ  
 Plaintiff - Appellant

Carlos Velasquez  
 Direct: 801-671-0361  
 Email: cfv1983@gmail.com  
 [NTC Pro Se]  
 1848 Ramona Avenue  
 Salt Lake City, UT 84108

v.

STATE OF UTAH  
 Defendant - Appellee

UTAH DEPARTMENT OF HUMAN SERVICES AND AGENCIES  
 Defendant - Appellee

UTAH OFFICE OF ADMINISTRATIVE HEARINGS  
 Defendant - Appellee

DIVISION OF AGING AND ADULT SERVICES, ADULT  
 PROTECTIVE SERVICES  
 Defendant - Appellee






















CARLOS VELASQUEZ,

Plaintiff - Appellant,


















v.

STATE OF UTAH; UTAH DEPARTMENT OF HUMAN SERVICES AND AGENCIES; UTAH OFFICE OF ADMINISTRATIVE HEARINGS;  
DIVISION OF AGING AND ADULT SERVICES, ADULT PROTECTIVE SERVICES,

















Defendants - Appellees.

03/22/2019	 20 pg, 535.52 KB	[10635098] Civil case docketed. Preliminary record filed. DATE RECEIVED: 03/21/2019. Ruling on IFP motion in district court due 04/22/2019. Notice of appearance due on 04/22/2019 for Carlos Velasquez. [19-4041] [Entered: 03/22/2019 08:38 AM]
03/22/2019	 3 pg, 224 KB	[10635265] Order filed by Clerk of the Court abating case and suspending briefing on the merits pending the district court's disposition of the motion docketed as ECF No. 32. Status report due 04/22/2019 by Carlos Velasquez. If the district court rules before that time, Mr. Velasquez shall promptly notify this court. The district court shall supplement the preliminary record once the district court rules. Please see attached order for additional information. Served on 03/22/2019. [19-4041] [Entered: 03/22/2019 02:28 PM]
03/29/2019	 1 pg, 37.09 KB	[10636997] District court order denying leave to proceed in forma pauperis filed. [19-4041] [Entered: 03/29/2019 09:41 AM]
04/03/2019	 29 pg, 642.93 KB	[10638369] Amended notice of appeal filed by Mr. Carlos Velasquez. Served on 03/29/2019. Manner of Service: US mail. [19-4041] [Entered: 04/03/2019 01:53 PM]
04/03/2019	 7 pg, 119.2 KB	[10638426] Entry of appearance filed by Mr. Carlos Velasquez. CERT. OF INTERESTED PARTIES: y. Served on 03/29/2019. Manner of Service: US mail. [19-4041] [Entered: 04/03/2019 04:03 PM]
04/03/2019	 2 pg, 36.39 KB	[10638431] Status report filed by Mr. Carlos Velasquez. Served on 04/01/2019. Manner of Service: US mail. [19-4041] [Entered: 04/03/2019 04:07 PM]
04/03/2019	 2 pg, 120.42 KB	[10638435] Order filed by Clerk of the Court continuing the abatement of this appeal. The district court clerk shall supplement the preliminary record once the court has ruled on [ECF No. 32]. Served on 04/03/2019. [19-4041] [Entered: 04/03/2019 04:15 PM]
04/05/2019	 14 pg, 545.08 KB	[10639183] Objections to a ruling that an appeal was made in bad faith received from Carlos Velasquez but not filed. Served on 04/03/2019. Manner of Service: US mail. [19-4041]--[Edited 04/08/2019 by JM: The court sent a response and an IFP application non PLRA to appellant on 4/8/19.] [Entered: 04/05/2019 02:10 PM]
04/08/2019	 108 pg, 3.09 MB	[10639540] Supplemental preliminary record filed. Contents: Pleadings including Doc. 40 - 04/08/2019 Memorandum Decision and Order Overruling Objection (Doc. 32). [19-4041] [Entered: 04/08/2019 12:57 PM]
04/08/2019	 5 pg, 124.33 KB	[10639672] Appellant's motion filed by Mr. Carlos Velasquez for permission to file electronically. Manner of Service: US mail. [19-4041] [Entered: 04/08/2019 04:17 PM]
04/08/2019	 21 pg, 578.5 KB	[10639695] Appellant's motion filed by Mr. Carlos Velasquez to conclude abatement of appeal. Served on 04/04/2019. Manner of Service: US mail. [19-4041] [Entered: 04/08/2019 04:47 PM]
04/09/2019	 2 pg, 133.69 KB	[10639740] Order filed by Clerk of the Court lifting the abatement of this appeal. Appellant's brief and the fee or IFP forms are due by 05/20/2019 for Carlos Velasquez. Served on 04/09/2019. [19-4041] [Entered: 04/09/2019 08:23 AM]
04/09/2019	 1 pg, 106.22 KB	[10639741] Jurisdictional review complete. Record on appeal due for 10th circuit 04/30/2019. [19-4041] [Entered: 04/09/2019 08:24 AM]
04/09/2019	 833 pg, 22.47 MB	[10639771] Record on appeal filed. No. of Volumes: 2 - Pleadings. Volume II includes a SEALED attachment. [19-4041] [Entered: 04/09/2019 09:01 AM]
04/09/2019	 1 pg, 117.33 KB	[10639958] Order filed by Clerk of the Court denying as unnecessary Appellant's motion to conclude abatement of appeal filed by Mr. Carlos Velasquez. Served on 04/09/2019. [19-4041] [Entered: 04/09/2019 02:29 PM]
04/09/2019	 3 pg, 126.57 KB	[10639960] Order filed by Clerk of the Court granting Appellant's motion for permission to file electronically. Served on 04/09/2019. [19-4041] [Entered: 04/09/2019 02:33 PM]
04/15/2019	 14 pg, 535.91 KB	[10641271] Notice of deficient motion received from Appellant Carlos Velasquez but not filed (motion was not on court approved form). IFP motion/ fee remains due on 05/20/19. Served on 04/10/2019. Manner of Service: US mail. [19-4041] [Entered: 04/15/2019 01:10 PM]
04/18/2019	 25 pg, 338.73 KB	[10642330] Appellant's motion filed by Mr. Carlos Velasquez for leave to proceed in forma pauperis. (The court's form starts on Page 15.) [19-4041] [Entered: 04/18/2019 12:00 PM]
04/19/2019	 6 pg, 185.21 KB	[10642811] Motion filed by Appellant Mr. Carlos Velasquez to defer filing the appendix until 04/19/2019. Served on: 04/19/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 04/19/2019 09:17 PM]
04/22/2019	 1 pg, 112.14 KB	[10642926] Order filed by Clerk of the Court denying as unnecessary Appellant's motion to defer filing of the appendix filed by Mr. Carlos Velasquez. Served on 04/22/2019. [19-4041] [Entered: 04/22/2019 10:59 AM]
05/09/2019	 75 pg, 426.99 KB	[10647555] Appellant/Petitioner's brief filed by Mr. Carlos Velasquez. 4 (Pro se) paper copies to be provided to the court. Served on 05/09/2019 by. Oral argument requested? No. This pleading complies

with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 05/09/2019 01:02 PM]

- 05/09/2019  8 pg, 1.43 MB [10647562] Certificate of service filed by Mr. Carlos Velasquez. Document served: The Appellant's Opening brief, In Re, Carlos Velasquez; served in person and 25 copies mailed to 10th. Cir. Court.. Served on 05/09/2019. Manner of Service: hand delivery, US mail. [19-4041] CV [Entered: 05/09/2019 01:12 PM]
- 05/21/2019  27 pg, 1.15 MB [10650217] Motion filed by Appellant Mr. Carlos Velasquez to expedite case. Served on: 05/21/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 05/21/2019 11:03 AM]
- 05/21/2019  1 pg, 95.88 KB [10650344] Order filed by Clerk of the Court referring appellant's Motion to Expedite Case to the panel of judges that will later be assigned to consider this case on the merits (no ruling will issue at this time). [10650217-2] Served on 05/21/2019. [19-4041] [Entered: 05/21/2019 02:48 PM]
- 05/24/2019  34 pg, 365.95 KB [10651231] Supplement filed by Mr. Carlos Velasquez to [10650217] Motion filed by Appellant Mr. Carlos Velasquez to expedite case.. Served on 05/24/2019. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 05/24/2019 11:41 AM]
- 05/24/2019  [10651293] Order filed by Clerk of the Court referring appellant's supplement to motion to expedite case [10651231-2] to the panel of judges that will later be assigned to consider this case on the merits (no ruling will issue at this time). Served on 05/24/2019. Text only entry - no attachment. [19-4041] [Entered: 05/24/2019 01:43 PM]
- 05/28/2019  14 pg, 369.42 KB [10651428] Motion filed by Appellant Mr. Carlos Velasquez. Plaintiff's Motion to Amend a Proposed Order. Served on 05/24/2019. Manner of Service: email. This pleading complies with all required (privacy, paper copy. Served on: 05/28/2019. [19-4041]--[Edited 05/28/2019 by JM to edit docket text.] CV [Entered: 05/28/2019 06:58 AM]
- 05/28/2019  1 pg, 95.39 KB [10651575] Order filed by Clerk of the Court referring Plaintiffs Motion to Amend a Proposed Order to the panel of judges that will later be assigned to consider this case on the merits (no ruling will issue at this time). [10651428-2] Served on 05/28/2019. [19-4041] [Entered: 05/28/2019 12:32 PM]
- 05/29/2019  5 pg, 192.01 KB [10651835] Supplement filed by Mr. Carlos Velasquez to [10650217] Motion filed by Appellant Mr. Carlos Velasquez to expedite case. Served on: 05/21/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV. Served on 05/29/2019. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 05/29/2019 09:19 AM]
- 05/29/2019  1 pg, 117.83 KB [10651884] Order filed by Clerk of the Court referring Appellant's Request to Submit for Decision [10651835-2] to the panel of judges that will later be assigned to consider this case on the merits (no ruling will issue at this time). Served on 05/29/2019. [19-4041] [Entered: 05/29/2019 10:37 AM]
- 05/30/2019  36 pg, 1.31 MB [10652185] Motion filed by Appellant Mr. Carlos Velasquez to expedite case. Served on: 05/30/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 05/30/2019 08:25 AM]
- 06/11/2019  [10654815] Order filed by Judges McHugh, Kelly and Moritz denying appellant's motion for leave to proceed in forma pauperis; denying all pending motions. Served on 06/11/2019. Text only entry - no attachment. [19-4041] [Entered: 06/11/2019 07:42 AM]
- 06/11/2019  6 pg, 217.58 KB [10654847] Affirmed; Terminated on the merits after submissions without oral hearing; Written, signed, unpublished; Judges McHugh, Kelly (authoring) and Moritz. Mandate to issue. [19-4041] [Entered: 06/11/2019 08:19 AM]
- 06/12/2019  1 pg, 22.2 KB [10655300] Letter from Office of Legislative Research and General Counsel received but not filed. Original. [19-4041] [Entered: 06/12/2019 11:28 AM]
- 06/13/2019  8 pg, 155.61 KB [10655506] Petition for rehearing filed by Appellant Mr. Carlos Velasquez. Served on: 06/13/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. --[Edited 06/13/2019 by MLB to correct event code and docket text][19-4041] CV [Entered: 06/13/2019 07:37 AM]
- 06/13/2019  1 pg, 94.33 KB [10655739] Order filed by Judges McHugh, Kelly and Moritz denying appellant's petition for rehearing filed by Mr. Carlos Velasquez. [19-4041] [Entered: 06/13/2019 03:46 PM]
- 06/14/2019  35 pg, 1.07 MB [10655843] Second Motion for Reconsideration received only not filed by Appellant Mr. Carlos Velasquez. Served on: 06/14/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041]--[Edited 06/14/2019 by JM to change event and edit the docket text. ]--[Edited 06/14/2019 by JM: The court has sent a response to Mr. Velazquez on 6/14/19. ] CV [Entered: 06/14/2019 08:53 AM]
- 06/14/2019  19 pg, 523.27 KB [10656031] "Plaintiffs Motion Objection to Denial, Request to Suspend Rule 40.3 in this Instance to Find a Second Petition for Rehearing is Merited" received, but not filed. Served on: 06/14/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes.

[19-4041]--[Edited 06/17/2019 by KLP to change the event code and docket text and attach a response letter.] CV [Entered: 06/14/2019 03:59 PM]

- 06/17/2019  73 pg, 1.68 MB [10656388] Motion received from Appellant Mr. Carlos Velasquez Objection and Renewed Motion to Suspend Rule 40.3 by Rule 2.1, Because the Panel Must Reconsider [10656031]. Served on: 06/17/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] --[Edited docket text 06/18/2019 by SLS.] CV [Entered: 06/17/2019 04:34 PM]
- 06/20/2019  101 pg, 1.82 MB [10657011] Motion filed by Appellant Mr. Carlos Velasquez to stay execution of the mandate, to waive Rule 40.3 and grant the Court a Second Opportunity for Rehearing. The Chief Judge is invoked 28 U.S.C. 352 on a disciplinary interest, to pre-empt frivolous and adversarial appeal. Document must be distributed per 28 U.S.C. 351(c), for rehearing. Served on: 06/20/2019. Manner of service: email, hand delivery. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 06/20/2019 09:10 AM]
- 06/20/2019  7 pg, 2.76 MB [10657237] Certificate of service filed by Mr. Carlos Velasquez. Document served: [10657011] Motion filed by Appellant Mr. Carlos Velasquez to stay execution of the mandate (Filed 6/20/19). State of Utah Respondents are served. The District Court Judge is delivered a single copy.. Served on 06/20/2019. Manner of Service: email, hand delivery. [19-4041] CV [Entered: 06/20/2019 02:37 PM]
- 06/21/2019  1 pg, 121.17 KB [10657411] Order filed by Judges McHugh, Kelly and Moritz denying Appellant's Motion for Stay of Mandate with Interest the Panel Must Recuse. The mandate will not be stayed and this panel will not recuse itself from this matter. Served on 06/21/2019. [19-4041] [Entered: 06/21/2019 09:32 AM]
- 06/21/2019  12 pg, 392.16 KB [10657466] Plaintiff's Complaint and Motion for Expeditious Review received from Appellant Mr. Carlos Velasquez. Served on: 06/21/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] --[Edited docket text 06/24/2019 by SLS to reflect title of pleading and to attach Response.] CV [Entered: 06/21/2019 11:40 AM]
- 06/22/2019  52 pg, 1.22 MB [10657584] Motion received but not filed by Appellant Mr. Carlos Velasquez to reconsider Panel has denied rehearing due by Rule 21, than 4; denied Suspension Rule 40.3; and denied Recusal, Stay of Mandate; Plaintiff's original claims are not resolved, judiciary prejudiced only to terminate case; Case Requires comprehensive reconsideration... Served on: 06/22/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] --[Edited 06/24/2019 by DD to note document as received and attach Clerk's response letter] CV [Entered: 06/22/2019 04:34 PM]
- 06/24/2019  53 pg, 1.1 MB [10657913] Motion filed by Appellant Mr. Carlos Velasquez to reconsider Motion for Reconsideration is to Recall Mandate to prevent injustice. Reconsideration may be due on all relevant motions, or upon the Appellant's Opening Brief., to recall the mandate. Served on: 06/24/2019. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-4041] CV [Entered: 06/24/2019 05:15 PM]
- 06/25/2019  2 pg, 104.44 KB [10658137] Order filed by Judges McHugh, Kelly and Moritz - This matter is before us on "Plaintiff's Motion for Reconsideration at all Recent Motions, Including That to Stay Mandate, That to Suspend Recuse, That to Suspend Rule 40.3, That to Reconvene a Panel by the Court of Appeals and Discern if There Were Not Errors in the Lower Court Decision...." The motion is denied, and Appellant's electronic filing privileges are revoked. The Clerk shall issue the mandate forthwith. Served on 06/25/2019. [19-4041] [Entered: 06/25/2019 01:54 PM]
- 06/25/2019  1 pg, 114.53 KB [10658138] Mandate issued. [19-4041] [Entered: 06/25/2019 01:54 PM]
- 06/28/2019  76 pg, 1.64 MB [10659435] Miscellaneous correspondence received from Mr. Carlos Velasquez but not filed. (Attached response sent on 07/01/2019.) [19-4041] [Entered: 07/01/2019 12:20 PM]
- 07/03/2019  13 pg, 476.73 KB [10660596] Miscellaneous document received from Mr. Carlos Velasquez but not filed. [19-4041] [Entered: 07/03/2019 02:54 PM]
- 07/10/2019  5 pg, 125.25 KB [10661671] Paper of Objection at the Clerk's Refusal to File received from Carlos Velasquez but not filed. Original only. Manner of Service: US mail. [19-4041] [Entered: 07/10/2019 07:53 AM]
- 07/24/2019  60 pg, 1.68 MB [10665449] Correspondence with motion attached received from Mr. Carlos Velasquez but not filed. Served on 06/26/2019. Manner of Service: US mail. [19-4041] [Entered: 07/24/2019 01:36 PM]
- 09/09/2019  2 pg, 20.99 KB [10677020] Supreme Court order dated 08/30/2019 granting the application for an extension of time within which to file a petition for a writ of certiorari to 11/12/2019 filed by Mr. Carlos Velasquez. Manner of Service: US mail. [19-4041] [Entered: 09/09/2019 01:59 PM]
- 09/13/2019  39 pg, 1.22 MB [10678358] Appellant's Motion for Leave to File a Petition to Recall the Court's Mandate filed by Carlos Velasquez. Postmarked on 09/12/2019. Manner of Service: US mail. [19-4041] [Entered: 09/13/2019 12:00 PM]
- 09/16/2019  2 pg, 123.21 KB [10678520] Order filed by Judges McHugh, Kelly and Moritz denying Appellant's motion for leave to file a petition to recall the mandate filed by Carlos Velasquez. The Clerk is directed not to accept any additional

pleadings or requests for filing in this appeal. Served on 09/16/2019. [19-4041] [Entered: 09/16/2019 06:40 AM]





☒ Documents and Docket Summary☐ Documents Only☐ Include Page NumbersSelected Pages:  Selected Size:  (Max: 30 MB)

Totals reflect accessible documents only and do not include unauthorized restricted documents.

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Billable Pages:	4	Cost:	0.40

**US District Court Electronic Case Filing System**  
**District of Utah (Central)**  
**CIVIL DOCKET FOR CASE #: 2:18-cv-00728-DN**

Velasquez v. State of Utah et al  
Assigned to: Judge David Nuffer  
Demand: \$78,417,000  
Case in other court: Tenth, 19-04041  
Cause: 05:0702 Administrative Procedure Act

Date Filed: 09/13/2018  
Date Terminated: 02/25/2019  
Jury Demand: None  
Nature of Suit: 899 Other Statutes:  
Administrative Procedures Act/Review or  
Appeal of Agency Decision  
Jurisdiction: Federal Question

**Plaintiff****Carlos Velasquez**

represented by **Carlos Velasquez**  
1848 RAMONA AVE  
SALT LAKE CITY, UT 84108  
(801)671-0361  
PRO SE

V.

**Defendant****State of Utah****Defendant****Utah Department of Human Services****Defendant****Utah Office of Administrative Hearings****Defendant****Division of Aging and Adult Services***Adult Protective Services*

Date Filed	#	Docket Text
09/13/2018	<u>1</u>	<b>**SEALED DOCUMENT**</b> MOTION for Leave to Proceed in forma pauperis filed and Memorandum in Support by Plaintiff Carlos Velasquez. Assigned to Magistrate Judge Brooke C. Wells for review, case file forwarded to Magistrate Judge. <b>(Received by the court on: 09/13/2018)</b> (tlh) (Entered: 09/14/2018)
09/18/2018	<u>2</u>	ORDER granting <u>1</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Brooke C. Wells on 09/18/2018. (tlh) (Entered: 09/18/2018)
09/18/2018	<u>3</u>	COMPLAINT against All Defendants filed by Carlos Velasquez. <b>(Originally received by the court on 09/13/2018)</b> . (Fee Status: IFP) (Attachments: # <u>1</u> Evidence and Disclosures, # <u>2</u> Writ of Certiorari, # <u>3</u> Table of Contents of Evidence, # <u>4</u> Exhibit J10, # <u>5</u> Exhibit 4D, # <u>6</u> Exhibit 6F, # <u>7</u> Exhibit 5E, # <u>8</u> Exhibit 7G, # <u>9</u> Exhibit 1A, # <u>10</u> Exhibit 3C, # <u>11</u>

		Exhibit 8H, # <u>12</u> Exhibit 2B, # <u>13</u> Exhibit I9, # <u>14</u> Civil Cover Sheet ) Assigned to Judge David Nuffer (tlh) (Entered: 09/19/2018)
09/18/2018	<u>4</u>	MOTION for [Unknown] Relief and Memorandum in Support filed by Plaintiff Carlos Velasquez. (tlh) Modified on 9/20/2018: document image ends midsentence with no signature as that is how it was received (alt) (Entered: 09/19/2018)
09/18/2018	<u>5</u>	CERTIFICATE OF SERVICE filed by Carlos Velasquez. (tlh) (Entered: 09/19/2018)
09/20/2018	<u>6</u>	DOCKET TEXT ORDER REFERRING CASE to Magistrate Judge Paul M. Warner under 28:636 (b)(1)(B), Magistrate to handle case up to and including R&R on all dispositive matters. Motion referred to Paul M. Warner. So ordered by Judge David Nuffer on 9/20/18 (docket text only - no attached document) (alt) (Entered: 09/20/2018)
09/25/2018	<u>7</u>	MOTION to Amend/Correct <u>4</u> MOTION for [Unknown] Relief filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Corrected Version of Motion, # <u>2</u> Sealed Appendix of Documents) Motion referred to Paul M. Warner (alt) (Entered: 09/27/2018)
09/25/2018	<u>8</u>	NOTICE OF FILING of document styled as Request to Submit filed by Plaintiff Carlos Velasquez (alt) (Entered: 09/27/2018)
10/10/2018	<u>9</u>	REQUEST to Submit for Decision filed by Plaintiff Carlos Velasquez (alt) (Entered: 10/10/2018)
10/24/2018	<u>10</u>	MOTION for Hearing filed by Plaintiff Carlos Velasquez. Motion referred to Paul M. Warner (alt) (Entered: 10/24/2018)
10/24/2018	<u>11</u>	MOTION for Clerk to Issue Non-Standard Summons filed by Plaintiff Carlos Velasquez. Motion referred to Paul M. Warner (alt) (Entered: 10/26/2018)
11/13/2018	<u>12</u>	DOCUMENT LODGED consisting of correspondence from Plaintiff. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 11/14/2018)
11/20/2018	<u>13</u>	MOTION to Amend/Correct Docket filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Letter and envelope) Motion referred to Paul M. Warner (alt) (Entered: 11/20/2018)
11/26/2018	<u>14</u>	DOCUMENT LODGED consisting of "Proposed Order". Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 11/26/2018)
11/27/2018	<u>15</u>	DOCUMENT LODGED consisting of Proposed Order. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 11/29/2018)
12/10/2018	<u>16</u>	DOCUMENTS LODGED consisting of 2018 Email and letter from plaintiff re: notice & copy of signed complaint. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (Attachments: # <u>1</u> Exhibit 12/5/2018 Letter from plaintiff)(asb) (Entered: 12/10/2018)
12/17/2018	<u>17</u>	DOCUMENT LODGED consisting of correspondence from Plaintiff. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 12/18/2018)
12/17/2018	<u>18</u>	MOTION to Amend/Correct filed by Plaintiff Carlos Velasquez. Motion referred to Paul M. Warner (alt) (Entered: 12/18/2018)
01/03/2019	<u>19</u>	DOCUMENT LODGED consisting of Notice of Financial Status. Note: attached document lodged for reference purposes only; no response required unless

		specifically ordered by the court. (alt) (Additional attachment(s) added on 1/3/2019: # <u>1</u> Envelope) (alt). (Main Document 19 replaced on 1/14/2019) (jwt). (Entered: 01/03/2019)
01/11/2019	<u>20</u>	DOCUMENT LODGED consisting of "Proof of Service" Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 01/11/2019)
01/14/2019	<u>21</u>	Modification of Docket re <u>19</u> Lodged Document. Error: page 8 was missing from original filing image. Correction: document image was replaced with complete document. (jwt) (Entered: 01/14/2019)
01/28/2019	<u>22</u>	MOTION to Vacate 6 Order Referring Case to Magistrate Judge, filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Supplement "Addenda") Motion referred to Paul M. Warner (alt) (Entered: 01/28/2019)
01/29/2019	<u>23</u>	MOTION to Amend/Correct a Proposed Order filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Envelope) Motion referred to Paul M. Warner (alt) (Entered: 01/29/2019)
01/30/2019	<u>24</u>	CERTIFICATE OF SERVICE by Carlos Velasquez (alt) (Entered: 01/31/2019)
02/04/2019	<u>25</u>	REQUEST to Submit for Decision filed by Plaintiff Carlos Velasquez (alt) (Entered: 02/04/2019)
02/15/2019	<u>26</u>	MOTION for Hearing filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Appendix) Motion referred to Paul M. Warner (alt) (Entered: 02/15/2019)
02/25/2019	<u>27</u>	MEMORANDUM DECISION AND ORDER OF DISMISSAL denying as moot all motions filed ( <u>4</u> Motion, <u>7</u> Motion to Amend/Correct, <u>10</u> Motion for Hearing, <u>11</u> Motion for Issuance of Non-Standard Summons, <u>13</u> Motion to Amend/Correct, <u>18</u> Motion to Amend/Correct, <u>22</u> Motion to Vacate, <u>23</u> Motion to Amend/Correct, <u>26</u> Motion for Hearing). Action to be dismissed with prejudice under authority of the IFP Statute. Signed by Judge David Nuffer on 2/25/19 (alt) (Entered: 02/25/2019)
02/25/2019	<u>28</u>	JUDGMENT that this action is dismissed with prejudice under the authority of 28 USC sec. 1915(e)(2)(B)(ii) - CASE CLOSED. Magistrate Judge Paul M. Warner no longer assigned to case. Signed by Judge David Nuffer on 2/25/19 (alt) (Entered: 02/25/2019)
03/08/2019	<u>29</u>	MOTION for Reconsideration re <u>27</u> Memorandum Decision for Dismissal, and Memorandum in Support filed by Plaintiff Carlos Velasquez (Attachments: # <u>1</u> Bookmarked Attachments) (alt) Modified on 3/11/2019: corrected entry text (alt) (Entered: 03/11/2019)
03/11/2019	<u>30</u>	CERTIFICATE OF SERVICE by Carlos Velasquez re <u>29</u> MOTION for Reconsideration re <u>27</u> Memorandum Decision for Dismissal (document also references a "Notice of Appeal", but no such notice has been filed in this case) (alt) (Entered: 03/11/2019)
03/12/2019	<u>31</u>	MEMORANDUM DECISION AND ORDER denying <u>29</u> Motion for Reconsideration. Signed by Judge David Nuffer on 3/12/19 (alt) (Entered: 03/12/2019)
03/14/2019	<u>32</u>	OBJECTIONS to <u>31</u> Memorandum Decision/Order on Motion to Reconsider, filed by Carlos Velasquez (alt) (Entered: 03/14/2019)
03/20/2019	<u>33</u>	NOTICE OF APPEAL as to <u>27</u> Memorandum Decision/Order on Motions, <u>28</u> Judgment, filed by Carlos Velasquez. Appeals to the USCA for the 10th Circuit. Fee Status: Not Paid. Filing fee \$ 505. (alt) (Entered: 03/21/2019)
03/21/2019	<u>34</u>	<b>**SEALED DOCUMENT**</b> MOTION for Leave to Appeal in forma pauperis, filed by Plaintiff Carlos Velasquez (alt) (Entered: 03/21/2019)

03/21/2019	<u>35</u>	Transmission of Preliminary Record to USCA re <u>33</u> Notice of Appeal (Attachments: # <u>1</u> Appendix) (alt) (Entered: 03/21/2019)
03/22/2019	<u>36</u>	USCA Case Number Case Appealed to Tenth Case Number 19-4041 for <u>33</u> Notice of Appeal filed by Carlos Velasquez. (jmr) (Entered: 03/22/2019)
03/22/2019	<u>37</u>	ORDER of USCA 10th Circuit as to <u>33</u> Notice of Appeal: Appeal is abated (alt) (Entered: 03/25/2019)
03/29/2019	<u>38</u>	MEMORANDUM DECISION AND ORDER denying <u>34</u> Motion for Leave to Appeal in Forma Pauperis. Signed by Judge David Nuffer on 3/28/19. (dla) (Entered: 03/29/2019)
04/03/2019	<u>39</u>	ORDER of USCA 10th Circuit as to <u>33</u> Notice of Appeal: appeal remains abated (alt) (Entered: 04/04/2019)
04/08/2019	<u>40</u>	MEMORANDUM DECISION AND ORDER overruling <u>32</u> Objections and denying "motion to permit a prior motion overlength". Signed by Judge David Nuffer on 4/8/19 (alt) (Entered: 04/08/2019)
04/08/2019	<u>41</u>	Transmission of Supplemental Preliminary Record to USCA re <u>33</u> Notice of Appeal (Attachments: # <u>1</u> Appendix) (alt) (Entered: 04/08/2019)
04/09/2019	<u>42</u>	ORDER of USCA 10th Circuit as to <u>33</u> Notice of Appeal: abatement is lifted (alt) (Entered: 04/09/2019)
04/09/2019	<u>43</u>	DOCUMENT LODGED consisting of copy of USCA Document mailed to Chambers. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 04/09/2019)
06/13/2019	<u>44</u>	ORDER of USCA 10th Circuit as to <u>33</u> Notice of Appeal: petition for rehearing denied (alt) (Entered: 06/13/2019)
06/21/2019	<u>45</u>	ORDER of USCA 10th Circuit denying Motion to Stay Mandate as to <u>33</u> Notice of Appeal (alt) (Entered: 06/21/2019)
06/25/2019	<u>46</u>	MANDATE of USCA as to <u>33</u> Notice of Appeal. According to the USCA the decision of the USDC for the Dist of UT is Affirmed. Judgment included with mandate: Yes. (Attachments: # <u>1</u> Mandate Cover Letter) (alt) (Entered: 06/26/2019)
07/05/2019	<u>47</u>	DOCUMENTS LODGED consisting of Copy of document sent to Tenth Curcuit. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court.  (jlh) (Entered: 07/05/2019)
09/10/2019	<u>48</u>	ORDER of USCA Supreme Court Circuit as to <u>33</u> Notice of Appeal filed by Carlos Velasquez. Supreme Court order dated 08/30/2019 granting the application for an extension of time within which to file a petition for a writ of certiorari to 11/12/2019 filed by Mr. Carlos Velasquez. (jmr) (Entered: 09/10/2019)
09/17/2019	<u>49</u>	ORDER of USCA Tenth Circuit as to <u>33</u> Notice of Appeal filed by Carlos Velasquez. Order filed by Judges McHugh, Kelly and Moritz denying Appellant's motion for leave to file a petition to recall the mandate filed by Carlos Velasquez. The Clerk is directed not to accept any additional pleadings or requests for filing in this appeal. (jmr) (Entered: 09/17/2019)

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<b>Billable Pages:</b>	4	<b>Cost:</b>	0.40



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ,

Plaintiff,

v.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION  
FOR RECONSIDERATION**

Case No. 2:18-cv-00728-DN

District Judge David Nuffer

Plaintiff Carlos Velasquez filed a motion (the “Motion”)<sup>1</sup> under Fed. R. Civ. P. 60(a)<sup>2</sup> for reconsideration of the Memorandum Decision and Order of Dismissal (“Dismissal Order”)<sup>3</sup> and resulting judgment.<sup>4</sup> The Motion is impermissibly and excessively overlength<sup>5</sup> and generally difficult to follow. In essence, its principal arguments are:

1. The Dismissal Order “misrepresent[s] the standards presented” and “the proceeding,”<sup>6</sup> lacks “credibility,”<sup>7</sup> and is otherwise inaccurate,<sup>8</sup> “misleading,” and an “abuse [of] authentic power.”<sup>9</sup>

<sup>1</sup> Request for Reconsideration of a Memorandum of Dismissal, and Order of Cloture (“Motion”), docket no. 29, filed March 8, 2019.

<sup>2</sup> See *id.* at 2:8-9.

<sup>3</sup> Docket no. 27, filed February 25, 2019.

<sup>4</sup> Judgment in a Civil Case, docket no. 28, filed February 25, 2019.

<sup>5</sup> See DUCivR 7-1(a)(3)(C).

<sup>6</sup> Motion, *supra* note 1, at 3:9-11, 4:7-8; see *id.* at 22-23, 34:15-19; see Letter from Velasquez, docket no. 29-1, filed March 8, 2019.

<sup>7</sup> Motion, *supra* note 1, at 22:7-9.

<sup>8</sup> *Id.* at 22:5-6.

<sup>9</sup> *Id.* at 5:16-6:2; see *id.* at 35.



2. The Dismissal Order and resulting judgment are erroneous as a matter of law and an abuse of discretion.<sup>10</sup>

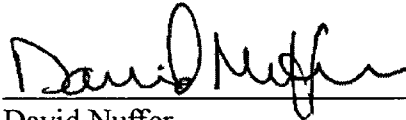
3. The court is prejudiced<sup>11</sup> and did not exercise “procedural diligence.”<sup>12</sup>

Each of these arguments is incorrect and without merit—as is the Motion also.

THEREFORE, IT IS HEREBY ORDERED that the Motion<sup>13</sup> is DENIED.

Signed March 12, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

---

<sup>10</sup> See *id.* at 5-8, 14, 18-32, 35-39, 42-43, 45.

<sup>11</sup> See *id.* at 22:15-23:1, 23:8-10, 35:4-7.

<sup>12</sup> *Id.* at 4:13-14; see *id.* at 13 ¶ 32, 23:6-10, 33-34, 46:12-15.

<sup>13</sup> Docket no. 29, filed March 8, 2019.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ,  
Plaintiff,

v.

STATE OF UTAH, et al.,  
Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO  
APPEAL IN FORMA PAUPERIS**

Case No. 2:18-cv-00728-DN

District Judge David Nuffer

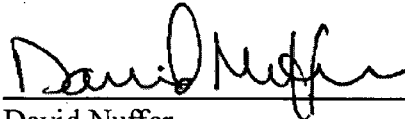
Plaintiff Carlos Velasquez has filed a motion (“Motion”)<sup>1</sup> to appeal in forma pauperis the (1) Memorandum Decision and Order of Dismissal,<sup>2</sup> (2) Judgment in a Civil Case,<sup>3</sup> and (3) Memorandum Decision and Order Denying Motion for Reconsideration.<sup>4</sup>

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”<sup>5</sup>

Velasquez’s appeal presents no substantial question for review, and there is no reasonable basis for his claims of error. Therefore, it is hereby certified that the appeal is not taken in good faith, and it is hereby ordered that the Motion is DENIED.

Signed March 28, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

<sup>1</sup> Motion to Proceed in Forma Pauperis on Appeal to the United States Court of Appeals, docket no. 34, filed under seal March 21, 2019; *see* Notice of Appeal, docket no. 33, filed March 20, 2019.

<sup>2</sup> Docket no. 27, filed February 25, 2019.

<sup>3</sup> Docket no. 28, filed February 25, 2019.

<sup>4</sup> Docket no. 31, filed March 12, 2019.

<sup>5</sup> 28 U.S.C. § 1915(a)(3).

by /s/ TONI BIGLER  
District Court Clerk

3RD DISTRICT COURT - SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

CARLOS VELASQUEZ,  
Plaintiff,  
vs.  
UT DEPT OF HUMAN SERVICES,  
Defendant.

: RULING  
: ORDER DISMISSING CASE WITHOUT PREJUDICE  
:  
: Case No: 170903058  
: Judge: PETTIT, KARA  
: Date: August 14, 2018

On 8/13/18, Petitioner filed a Request to Submit his Motion to Withdraw Petition for decision. The Motion to Withdraw Petition was filed on 4/25/18 and served on 4/23/18. The Motion asks the Court to close this case and allow Petitioner to 'withdraw' the original and amended petitions in this case. No opposition to the Motion has been filed.

The Court finds good cause to GRANT Petitioner's Motion and hereby ORDERS that this matter is dismissed without prejudice.

This is the Order of the Court.

End Of Order - Signature at the Top of the First Page

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 170903058 by the method and on the date specified.

EMAIL: CARLOS VELASQUEZ cfv1983@gmail.com

EMAIL: J STEPHEN MIKITA smikita@agutah.gov

08/14/2018

/s/ TONI BIGLER

Date: \_\_\_\_\_

Deputy Court Clerk

Dated: August 10, 2018  
11:25:28 AM

/s/ Thomas R. Lee  
Associate Chief Justice



**IN THE SUPREME COURT OF THE STATE OF UTAH**

-----ooOoo-----

---

Carlos Velasquez,  
Petitioner,  
v.  
Department of Human Services,  
Respondent.

**ORDER**  
  
Supreme Court No. 20180403-SC  
  
Court of Appeals No. 20180388-CA  
  
Trial Court No. 2246378

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-----ooOoo-----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on June 1, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

**End of Order - Signature at the Top of the First Page**

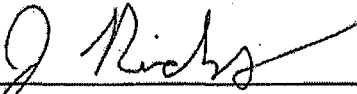
CERTIFICATE OF SERVICE

---

I hereby certify that on May 29, 2018, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

Carlos Velasquez  
cfv1983@gmail.com

STANFORD E. PURSER  
spurser@agutah.gov

By   
Jeffrey Ricks  
Judicial Assistant

Case No. 20180388  
District Court No. 2246378

IN THE UTAH COURT OF APPEALS

MAY 25 2018

---ooOoo---

CARLOS VELASQUEZ,	)	ORDER DENYING PETITION
<i>Petitioner,</i>	)	FOR EXTRAORDINARY RELIEF
<i>v.</i>	)	
UTAH DEPARTMENT OF HUMAN	)	Case No. 20180388-CA
SERVICES, ET. AL.,	)	
<i>Respondents.</i>	)	
	)	
	)	

Before Judges Christiansen, Toomey, and Hagen.

This matter is before the court on Carlos Velasquez's pro se "Motion to Renew Service on Notice of Appeal, Motion to Order Preliminary Timeliness, Docket Statement" and corresponding matters filed on May 24, 2018. We construe the filings as a petition for extraordinary writ.

IT IS HEREBY ORDERED that the petition for extraordinary writ is denied.

DATED this 25<sup>th</sup> day of May, 2018.

FOR THE COURT:

Kate A. Toomey  
Kate A. Toomey, Judge

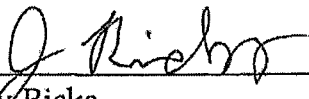
CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, a true and correct copy of the foregoing ORDER DENYING PETITION FOR EXTRAORDINARY RELIEF was deposited in the United States mail or was sent by electronic mail to be delivered to:

Carlos Velasquez  
cfv1983@gmail.com

STANFORD E. PURSER  
spurser@agutah.gov

DEPT OF HUMAN SERVICES  
ATTN: JANETHA HANCOCK  
120 N 200 W RM 319 BX 3400  
SALT LAKE CITY UT 84145-0500

By   
Jeffrey Ricks  
Judicial Assistant

Case No. 20180388  
DEPT OF HUMAN SERVICES, 2246378

Dated: April 19, 2018  
10:31:14 AM

/s/ Thomas R. Lee  
Associate Chief Justice



**IN THE SUPREME COURT OF THE STATE OF UTAH**

-----ooOoo-----

Carlos Velasquez,  
Petitioner,

v.

Department of Human Service, Utah  
Legislature, and the Honorable Judge  
Kara Pettit,  
Respondents.

**ORDER**

Supreme Court No. 20180090-SC

Court of Appeals No. 20170848-CA

Trial Court No. 170903058

-----ooOoo-----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on January 9, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied. Any other motions or pleadings filed in connection with this petition are deemed moot. Any additional filings under this case number will not be considered by the Court.

**End of Order - Signature at the Top of the First Page**



FILED  
UTAH APPELLATE COURTS

IN THE UTAH COURT OF APPEALS

JAN - 9 2018

---ooOoo---

CARLOS VELASQUEZ,	)	ORDER
Petitioner,	)	
v.	)	Case No. 20170848-CA
DEPARTMENT OF HUMAN SERVICE, UTAH	)	
LEGISLATURE,	)	
AND THE HONORABLE JUDGE KARA PETTIT	)	
Respondent.	)	
	)	
	)	
	)	
	)	

-----


This matter is before the court on Petitioner's pro se suggestion for certification to the Utah Supreme Court, filed on January 4, 2018.

This court denied Petitioner's petition for extraordinary writ on October 27, 2017. Petitioner's petition for rehearing was denied on November 10, 2017.

Petitioner's request to certify his denied petition for extraordinary writ is not well taken, and this matter will not be certified to the Utah Supreme Court. No further action will be taken by this court in this closed matter.

DATED this 9<sup>th</sup> day of January, 2018.

FOR THE COURT:

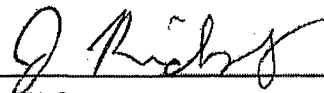
  
\_\_\_\_\_  
Gregory K. Orme, Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2018, a true and correct copy of the foregoing ORDER was sent by electronic mail to be delivered to:

Carlos Velasquez  
cfv1983@gmail.com

BRENT M. JOHNSON  
Brentj@utcourts.gov

By   
Jeffrey Ricks  
Judicial Assistant

Case No. 20170848  
District Court No. 170903058

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**September 16, 2019**

**Elisabeth A. Shumaker  
Clerk of Court**

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH; UTAH  
DEPARTMENT OF HUMAN SERVICES  
AND AGENCIES; UTAH OFFICE OF  
ADMINISTRATIVE HEARINGS;  
DIVISION OF AGING AND ADULT  
SERVICES, ADULT PROTECTIVE  
SERVICES,

Defendants - Appellees.

No. 19-4041  
(D.C. No. 2:18-CV-00728-DN)  
(D. Utah)

**ORDER**

Before **McHUGH, KELLY, and MORITZ**, Circuit Judges.

This matter is before the court on the appellant's *Motion for Leave to File a  
Petition to Recall the Court's Mandate*.

Upon consideration, the motion is denied. In addition, and noting this matter is closed, the Clerk is directed not to accept any additional pleadings or requests for filing in the appeal.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line.

ELISABETH A. SHUMAKER, Clerk



**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**June 11, 2019**

**Elisabeth A. Shumaker  
Clerk of Court**

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

STATE OF UTAH; UTAH  
DEPARTMENT OF HUMAN SERVICES  
AND AGENCIES; UTAH OFFICE OF  
ADMINISTRATIVE HEARINGS;  
DIVISION OF AGING AND ADULT  
SERVICES, ADULT PROTECTIVE  
SERVICES,

Defendants - Appellees.

No. 19-4041  
(D.C. No. 2:18-CV-00728-DN)  
(D. Utah)

**ORDER AND JUDGMENT\***

Before **McHUGH, KELLY**, and **MORITZ**, Circuit Judges.\*\*

Plaintiff-Appellant Carlos Velasquez appeals from the district court's dismissal of his case as barred by the Rooker-Feldman doctrine. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

\*\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

### **Background**

This appeal is the latest skirmish in a long-running legal battle between Mr. Velasquez and various agencies and courts of the State of Utah. The saga appears to have begun with administrative law proceedings at the Utah Department of Human Services. 1 R. 629. After the administrative proceedings concluded, he took his fight to Utah state court, where in addition to his original claims he raised new constitutional claims regarding the fairness of his administrative proceedings and challenging the constitutionality of several Utah statutes and regulations. Id. Unable to find success after exhausting his appeals in Utah state court, he sued the State of Utah and several state agencies in federal district court. Id. at 6. In federal court he once again raised his constitutional claims from state court while adding constitutional claims that the Utah Supreme Court “‘sustained malice,’ ‘refused to clarify the constitutional question,’ and ‘refused to recognize evidence.’” Id. at 629 (quoting Compl. at 25).

Because Mr. Velasquez proceeded pro se and in forma pauperis (IFP), the district court construed his complaint liberally, but found the claims to be “generally confusing and difficult to decipher.” Id. at 628. Ultimately, the court dismissed his complaint as barred by the Rooker-Feldman doctrine because it “to one extent or another” asked the court to review “certain decisions rendered concerning the Administrative Case by Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court.” Id. at 631. Following that

order, Mr. Velasquez filed a motion for reconsideration,<sup>1</sup> which the district court denied. Id. at 712. The district court denied Mr. Velasquez leave to proceed on appeal IFP, certifying that the appeal was not taken in good faith because it “presents no substantial question for review” and “there is no reasonable basis for his claims of error.” Id. at 728. Mr. Velasquez has renewed his motion to proceed IFP on appeal in this court.

### Discussion

We review a district court’s dismissal for lack of subject matter jurisdiction de novo, and any factual findings for clear error. Stuart v. Colo. Interstate Gas Co., 271 F.3d 1221, 1225 (10th Cir. 2001). The denial of a motion for reconsideration under Rule 59(e) is reviewed for abuse of discretion. Nelson v. City of Albuquerque, 921 F.3d 925, 929 (10th Cir. 2019).

First, Mr. Velasquez challenges the dismissal of his case. The premise of the Rooker-Feldman doctrine is that 28 U.S.C. § 1257(a) gives only the United States Supreme Court jurisdiction to review appeals from state court judgments. See Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Trust

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<sup>1</sup> While Mr. Velasquez identified Federal Rule of Civil Procedure 60(a) as the basis for his reconsideration motion, that rule is usually reserved for correcting clerical errors or inadvertent mistakes. See McNickle v. Bankers Life and Cas. Co., 888 F.2d 678, 682 (10th Cir. 1989); 11 Charles Allen Wright & Arthur R. Miller, Federal Practice & Procedure § 2854 (3d ed., April 2019 update) [“Wright & Miller”]. Instead, Rule 59(e) is the mechanism typically used to correct a substantive error in a court’s legal determination after judgment has been entered. See Nelson, 921 F.3d at 928–29; Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); 11 Wright & Miller § 2810.1. Accordingly, for purposes of this appeal we construe his motion as one under Rule 59(e).



Co., 263 U.S. 413 (1923). By negative inference, inferior federal courts lack subject matter jurisdiction to hear appeals from state court. Mo's Express, LLC v. Sopkin, 441 F.3d 1229, 1233 (10th Cir. 2006). The scope of the doctrine, however, is narrow. Rooker-Feldman only bars federal district courts from hearing cases “brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Where the relief requested would necessarily undo the state court’s judgment, Rooker-Feldman deprives the district court of jurisdiction. Mo's Express, 441 F.3d at 1237.

In Mr. Velasquez’s case, he appears to challenge decisions by the Utah state courts reviewing his state administrative law appeal. He claims that the Utah state courts violated his constitutional rights in the course of that litigation and seems to seek reversal of decisions he lost on the merits. This is precisely the type of suit that Rooker-Feldman prevents federal district courts from hearing. Having already raised his various objections in state court and failed, Mr. Velasquez has now “repaired to federal court to undo the [state-court] judgment” against him. Exxon, 544 U.S. at 293. If he wants to receive federal review of his constitutional claims from Utah court, his only remedy is an appeal to the United States Supreme Court. The district court properly dismissed this action for lack of subject matter jurisdiction.

Second, Mr. Velasquez challenges the district court’s denial of his motion for reconsideration. We review such a denial for an abuse of discretion, and a district

court only abuses its discretion when its decision was “arbitrary, capricious, whimsical, or manifestly unreasonable.” Nalder v. West Park Hosp., 254 F.3d 1168, 1174 (10th Cir. 2001) (internal quotation marks omitted). Here, Mr. Velasquez’s motion was impermissibly overlong and entirely “without merit.” 1 R. 712–13. The district court did not abuse its discretion by denying a motion that raised no new arguments and did not reveal any defect in the court’s original decision. See Nelson, 921 F.3d at 929–30; Servants, 204 F.3d at 1012.

Finally, we deny Mr. Velasquez’s motion to proceed IFP; he has not advanced a rational argument on the law and facts to warrant such status. See DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

AFFIRMED. All pending motions are DENIED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

CARLOS VELASQUEZ,

Plaintiff,

v.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER OF DISMISSAL**

Case No. 2:18-cv-00728-DN

District Judge David Nuffer

Plaintiff Carlos Velasquez filed the complaint<sup>1</sup> and several motions (the “Motions”)<sup>2</sup> as a pro se litigant. Because he is proceeding pro se, his pleadings are construed liberally.<sup>3</sup> He was also permitted to proceed in form pauperis under 28 U.S.C. § 1915 (the “IFP Statute”);<sup>4</sup> accordingly, the sufficiency of his complaint is reviewed under the authority of that statute.

**BACKGROUND**

Velasquez’s complaint is generally confusing and difficult to decipher. It is addressed to the “Tenth District” and captioned as a “Petition for Writ of Certiorari” to appeal “Utah Administrative Case: 2246378” (the “Administrative Case”).<sup>5</sup> In the portion entitled, “Notice of

<sup>1</sup> Appellant’s Petition for Writ of Certiorari (the “Complaint”), docket no. 3, filed September 18, 2018.

<sup>2</sup> Pre-Trial Motions, docket no. 4, filed September 18, 2018; Motion to Amend Filing Previously Made, docket no. 7, filed under seal September 25, 2018; Motion to Request an Immediate Hearing, docket no. 10, filed October 24, 2018; Non-Dispositive Motion to Issue Summons, docket no. 11, filed October 24, 2018; Motion to Amend the Docket to Let the Docket Show the Specific Titles of Papers Submitted, docket no. 13, filed November 20, 2018; Motion to Amend as Correct a Stated Venue of Petition, docket no. 18, filed December 17, 2018; Motion to Vacate a Referral to a Magistrate Judge, docket no. 22, filed January 28, 2019; Motion to Amend a Proposed Order/Query of Amend, docket no. 23, filed January 29, 2019; Motion for Hearing, docket no. 26, filed February 15, 2019 (collectively, the “Motions”).

<sup>3</sup> See *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003).

<sup>4</sup> Order on Application to Proceed Without Prepayment of Fees, docket no. 2, filed September 18, 2018.

<sup>5</sup> Complaint, *supra* note 1, at 1.

Appeal,” he states that he is seeking (1) a declaration of unconstitutionality with respect to several statutes and regulations; (2) “[f]alsity” of the Administrative Case; (3) “[i]nterest to preference on this case over ordinary civil cases”; (4) “[i]nterest to three applications for extraordinary writ[s], Mandamus, Prohibition, [and] Execution”; and (5) “[i]nterest to generate an effective ruling to prosecute original tortfeasors against a manner of conspiracy.”<sup>6</sup>

The genesis of this action appears to be the Administrative Case, which the Utah Division of Aging and Adult Services, Adult Protection Services, apparently commenced against Velasquez. According to the complaint, the Administrative Case was based on “an incidence of Abuse of a Vulnerable Adult.”<sup>7</sup> The complaint details an extensive history of litigating the Administrative Case in Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. That litigation history includes the constitutional claim Velasquez asserts in this action.

The complaint goes on to allege that Velasquez has “a sustained interest to have some more impartial committee weigh whether” the Utah Supreme Court “sustained procedural malice to wrongful decline of interest” when it issued certain orders in the course of his litigation of the Administrative Case.<sup>8</sup> The complaint further alleges that the Utah Supreme Court “sustained malice,” “refused to clarify the constitutional question,” and “refused to recognize evidence.”<sup>9</sup>

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<sup>6</sup> *Id.* at 13-52.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.* at 24-25.

<sup>9</sup> *Id.* at 25.

## LEGAL STANDARDS

Whenever a party is authorized to proceed without payment of fees under the IFP Statute, the court is required to “dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted.”<sup>10</sup> In determining whether a complaint fails to state a claim for relief under the IFP Statute, courts employ the same standard used for analyzing motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6).<sup>11</sup> Under that standard, courts “look for plausibility in th[e] complaint.”<sup>12</sup> More precisely, courts “look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief. Rather than adjudging whether a claim is ‘improbable,’ ‘[f]actual allegations [in a complaint] must be enough to raise a right to relief above the speculative level.’”<sup>13</sup>

In undertaking that analysis here, it is recognized that Velasquez is proceeding pro se and that “[a] pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.”<sup>14</sup> However, it is not “the proper function of the district court to assume the role of advocate for the pro se litigant,”<sup>15</sup> and the court “will not supply additional facts, nor will [it] construct a legal theory for [a pro se] plaintiff that assumes facts that have not been pleaded.”<sup>16</sup> Further,

[t]he broad reading of [a pro se] plaintiff’s complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based. . . . [C]onclusory allegations without supporting factual averments are

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<sup>10</sup> 28 U.S.C. § 1915(e)(2)(B)(ii).

<sup>11</sup> See *Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007).

<sup>12</sup> *Id.* at 1218 (citations and internal quotation marks omitted).

<sup>13</sup> *Id.* (citations and internal quotation marks omitted).

<sup>14</sup> *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); see *Ledbetter*, 318 F.3d at 1187.

<sup>15</sup> *Bellmon*, 935 F.2d at 1110.

<sup>16</sup> *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

insufficient to state a claim on which relief can be based. This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted. Moreover, in analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations.<sup>17</sup>

After reviewing a pro se plaintiff's complaint under the IFP Statute, courts may dismiss the complaint for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."<sup>18</sup>

### ANALYSIS

#### **The *Rooker-Feldman* doctrine bars this action.**

Velasquez's complaint makes it clear that he is asking this court to review, to one extent or another, certain decisions rendered concerning the Administrative Case by Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. This is not allowed under the *Rooker-Feldman* doctrine.

"The *Rooker-Feldman* doctrine prohibits federal suits that amount to appeals of state-court judgments."<sup>19</sup> It "establishes, as a matter of subject-matter jurisdiction, that only the United States Supreme Court has appellate authority to review a state-court decision."<sup>20</sup> "Thus, in applying the *Rooker-Feldman* doctrine, [a federal court of appeals] focus[es] on whether the lower federal court, if it adjudicated [the] plaintiff's claims, would effectively act as an appellate court reviewing the state court disposition."<sup>21</sup>

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<sup>17</sup> *Bellmon*, 935 F.2d at 1110 (citations omitted).

<sup>18</sup> *See Kay*, 500 F.3d at 1217 (citation and internal quotation marks omitted).

<sup>19</sup> *Bolden v. City of Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006).

<sup>20</sup> *Merrill-Lynch Bus. Fin. Servs. v. Nudell*, 363 F.3d 1072, 1074-75 (10th Cir. 2004); *see* 28 U.S.C. § 1257(a) (providing that the Supreme Court has jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had").

<sup>21</sup> *Nudell*, 363 F.3d at 1075.

All of the allegations in Velasquez's complaint center around proceedings related to the Administrative Case. Furthermore, Velasquez admits in the complaint that he has already litigated all of the issues raised in the complaint (including the constitutional issues) in Utah administrative agencies, the Utah Third District Court, the Utah Court of Appeals, and the Utah Supreme Court. If Velasquez's claims were adjudicated in this action, the court would "effectively act as an appellate court reviewing" the decisions of those state agencies and tribunals.<sup>22</sup> Thus, the *Rooker-Feldman* doctrine bars this action, and it must be dismissed under the IFP Statute for failure to state a claim on which relief can be granted.<sup>23</sup>

**Amendment would be futile.**

As previously noted, after reviewing a pro se plaintiff's complaint under the IFP Statute, the complaint may be dismissed for failure to state a claim "only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."<sup>24</sup> Here, there is no additional plausible allegations that would save any of Velasquez's claims from dismissal. Accordingly, it would be futile to provide Velasquez with an opportunity to amend the complaint.

**The Motions are moot.**

After carefully reviewing the Motions, it is determined that none of the Motions has any effect on the analysis set forth above concerning the sufficiency of Velasquez's complaint. Accordingly, all of the Motions will be denied as moot.

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<sup>22</sup> *Id.*

<sup>23</sup> See 28 U.S.C. § 1915(e)(2)(B)(ii).

<sup>24</sup> See *Kay*, 500 F.3d at 1217 (citation and internal quotation marks omitted).



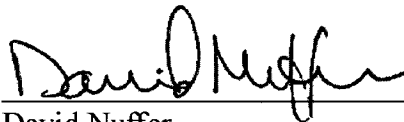
**ORDER**

THEREFORE, IT IS HEREBY ORDERED as follows:

1. All of the Motions<sup>25</sup> are DENIED as moot.
2. This action will be DISMISSED WITH PREJUDICE under the authority of the IFP Statute.<sup>26</sup>

Signed February 25, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

---

<sup>25</sup> See *supra* note 2.

<sup>26</sup> See 28 U.S.C. § 1915(e)(2)(B)(ii).



## RELEVANT STATUTES

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## 28 U.S. §455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(June 25, 1948, ch. 646, 62 Stat. 908 ; Pub. L. 93-512, §1, Dec. 5, 1974, 88 Stat. 1609 ; Pub. L. 95-598, title II, §214(a), (b), Nov. 6, 1978, 92 Stat. 2661 ; Pub. L. 100-702, title X, §1007, Nov. 19, 1988, 102 Stat. 4667 ; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117 .)

28 U.S. §1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928 ; Pub. L. 100-352, §2(a), (b), June 27, 1988, 102 Stat. 662 .)

## 28 U.S. §1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch. 646, 62 Stat. 929 ; Pub. L. 91-358, title I, §172(a)(1), July 29, 1970, 84 Stat. 590 ; Pub. L. 100-352, §3, June 27, 1988, 102 Stat. 662 .)

## 28 U.S. §1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98-620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356 .)

## 28 US §1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of

the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of-

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that-

(A) the allegation of poverty is untrue; or

(B) the action or appeal-

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954 ; May 24, 1949, ch. 139, §98, 63 Stat. 104 ; Oct. 31, 1951, ch. 655, §51(b), (c), 65 Stat. 727 ; Pub. L. 86-320, Sept. 21, 1959, 73 Stat. 590 ; Pub. L. 96-82, §6, Oct. 10, 1979, 93 Stat. 645 ; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117 ; Pub. L.



104-134, title I, §101[(a)] [title VIII, §804(a), (c)-(e)], Apr. 26, 1996, 110 Stat. 1321, 1321-73 to 1321-75; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.]

## 28 US §2401. Time for commencing action against United States

(a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(June 25, 1948, ch. 646, 62 Stat. 971 ; Apr. 25, 1949, ch. 92, §1, 63 Stat. 62 ; Pub. L. 86-238, §1(3), Sept. 8, 1959, 73 Stat. 472 ; Pub. L. 89-506, §7, July 18, 1966, 80 Stat. 307 ; Pub. L. 95-563, §14(b), Nov. 1, 1978, 92 Stat. 2389 ; Pub. L. 111-350, §5(g)(8), Jan. 4, 2011, 124 Stat. 3848.)

## 28 US §1981. Equal rights under the law

### *(a) Statement of equal rights*

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

### *(b) "Make and enforce contracts" defined*

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

### *(c) Protection against impairment*

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(R.S. §1977; Pub. L. 102-166, title I, §101, Nov. 21, 1991, 105 Stat. 1071.)

## 28 US §1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. §1979; Pub. L. 96-170, §1, Dec. 29, 1979, 93 Stat. 1284 ; Pub. L. 104-317, title III, §309(c), Oct. 19, 1996, 110 Stat. 3853 .)

## 28 US §1988. Proceedings in vindication of civil rights

### *(a) Applicability of statutory and common law*

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

### *(b) Attorney's fees*

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its

discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

*(c) Expert fees*

In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. §722; Pub. L. 94-559, §2, Oct. 19, 1976, 90 Stat. 2641 ; Pub. L. 96-481, title II, §205(c), Oct. 21, 1980, 94 Stat. 2330 ; Pub. L. 102-166, title I, §§103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103-141, §4(a), Nov. 16, 1993, 107 Stat. 1489 ; Pub. L. 103-322, title IV, §40303, Sept. 13, 1994, 108 Stat. 1942 ; Pub. L. 104-317, title III, §309(b), Oct. 19, 1996, 110 Stat. 3853 ; Pub. L. 106-274, §4(d), Sept. 22, 2000, 114 Stat. 804 .)



FILED  
U.S. DISTRICT COURT

2018 OCT 24 A 9:27

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

Carlos Velasquez, cfv1983@gmail.com,

Pro Se

1848 Ramona Ave

Salt Lake City, UT

84108

801.671.0361

In the United States District Court, Tenth District  
for the State of Utah, Central Division

Velasquez

v.

State of Utah, by & through  
Utah Department of Human  
Services,

Office of Administrative  
Hearings

Division of Aging and  
Adult Services/Adult  
Protective Services

Case No. 2:18-00728-DN-PMW

Judge Nuffer

Referred to

Chief Magistrate Judge  
Warner

**MOTION TO REQUEST AN  
IMMEDIATE HEARING**

**Subject: PETITION FOR  
WRIT OF CERTIORARI,  
Consideration from Pre-  
Trial Motions: To  
Proceed the Utah  
Administrative Case  
2246378 with  
consideration of a  
constitutional question,  
order of preference**

1

**Summons in a Civil Action**

To the following parties, respondent and defendant;

1. Utah Attorney General, Sean D. Reyes (#7969)

350 N State St. Ste. #230

Salt Lake City, UT 84114

2. Utah Department of Human Services,  
Asst. Solicitor General, Erin T. Middleton (#10666)

350 N. State St. Ste. #230

Salt Lake City, UT 84114

3. The Utah Legislature by The Office of Legislative  
Research and General Counsel

John L. Fellows (#4212)

Thomas R. Vaughn (#10340)

Tara L. Harrison (#12113)

W210 State Capitol Complex

Salt Lake City, UT 84114

4. Division of Aging and Adult Services, Adult Protective  
Services

Asst. Attorney General, J. Stephen Mikita

350 N. State St. Ste.# 230

Case Worker, Effie Keele

168 N. 1950 W.

Salt Lake City, UT 84116

(Prior service received for Effie Keele by Heather Holbrode at the same location.)

5. Utah Office of Administrative Hearings

Unrepresented

195 N. 1950 W.

Salt Lake City, UT 84116

It is alleged the statute governing "supported" claims at Utah DAAS/APS is unconstitutional (Fed. R. Civ. P. 5.1) with deliberation and conspiracy, and violates United States Constitution Article I, sections 9 and 10; Article IV, Section 2; Article VI; The Amended Bill of Rights, Titles I, IV, V, VI, VIII, XIV, IX, and X; and breached duty and confidence to commit *defamation* against rights respective of duty, select and general Utah's subsequent Titles of Bills of Right.

The agency claim is alleged falsified, and the resolution sustaining it before the Administrative Court, capricious and collusive. The person Alleged made abused corroborates the falsity of the claim with affidavit, as presented.

The State of Utah is alleged to be at fault to the scope of the intrusion. It has deliberately violated an established right for a negative and frivolous statutory cause.

Prior served, a Petition for *Writ of Certiorari*, and Pre-Trial motions with explicit stipulations for time.

This document may be responded to before 60 days have passed since 9/18/18, Fed. R. Civ. P. 12 (a)(2), or unless otherwise specified.

It has, however, been made a motion (Pre-Trial Motions, Part I) to reduce the time required to respond to within 21 days of filing (since 9/18/18), that a motion to proceed this matter to Pre-Trial conferences (Fed. R. App. P. 15, and 27, and Ut. R. Civ. P. 25A(b)(1), as time made to clarify the immediate constitutional question.

If the court can be found moved, the matter on principle motions may yet find parties to order of Default on the matter of this motion for a Pre-Trial hearing, to decide to proceed the Utah Administrative Case 2246378 in the Tenth District Court of the State of Utah.

This document does re-state a constitutional question, and the Attorney General for the State of Utah is served the petition and this Motion and Summons per Fed. R. Civ. P. 5.1.

Immediate replies are respected and appreciated. Thank you.

Date: \_\_\_\_\_

/s/Carlos Velasquez, *Pro Se*

CLERK OF THE TENTH DISTRICT  
COURT

Date: \_\_\_\_\_

\_\_\_\_\_

Signature of the Clerk or Deputy Clerk







John Q. Cannon  
Director

John L. Fellows  
General Counsel

John L. Fellows (# 4212)  
Thomas R. Vaughn (# 10340)  
Tara L. Harrison (# 12113)  
Office of Legislative Research and General Counsel  
Utah State Capitol Complex  
House Building, Suite W210  
P.O. Box 145210  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1032

October 11, 2018

D. Mark Jones  
Clerk of Court  
United States District Court  
District of Utah  
351 South West Temple, Rm 1.100  
Salt Lake City, UT 84101

Cc: Erin Middleton, Utah Attorney General's Office  
Carlos Velasquez, Pro se

Dear Mr. D. Mark Jones:

The Office of Legislative Research and General Counsel was served two documents by Mr. Carlos Velasquez. One appears to be a Petition for Writ of Certiorari and another is described as a pre-trial motion. The latter is accompanied by case number 18-00728 and lists the case as being assigned to Magistrate Judge Brooke C. Wells.

From our review of the documents that Mr. Velasquez personally served our office and from our review of the court's docket for *Velasquez v. State of Utah et al*, it does not appear that the Utah State Legislature, the Office of Legislative Research and General Counsel, nor any of their members or employees are parties to this matter. Accordingly, it is not our intention to enter an appearance in this matter. If, however, we are mistaken, please notify us immediately so that we may take proper action.

Kind regards,

Tara L. Harrison  
Associate General Counsel

Utah State Capitol Complex  
House Building, Suite W210  
PO Box 145210  
Salt Lake City, Utah  
84114-5210  
Phone (801) 538-1032  
Fax (801) 538-1712  
www.le.utah.gov



Carlos V &lt;cfv1983@gmail.com&gt;

---

**Velasquez v. State of Utah--Case # 19-4041--Tenth Circuit Court of Appeals**

3 messages

---

**Stephen Mikita** <smikita@agutah.gov>

Fri, May 17, 2019 at 11:06 AM

To: "cfv1983@gmail.com" &lt;cfv1983@gmail.com&gt;

Dear Mr. Velasquez,

I received your two voicemails. It is my understanding that the district court did not order the state to appear in the case below. As a result, the state was not a party to the underlying action. Since the state is not a party, it does not intend to file a brief in the appeal you referenced in your messages.

Sincerely,

Steve Mikita

---

**Carlos V** <cfv1983@gmail.com>

Fri, May 17, 2019 at 12:18 PM

To: Stephen Mikita &lt;smikita@agutah.gov&gt;

Thank you for your reply Mr. Mikita,

The reasoning for the district court's decision is under review.

The magistrate did not do diligence, and the case was terminated on a motion to vacate the Magistrate referral.

The state was served all parts of process, and the standing of the statute is refuted in part by *Mathews v. Eldridge* (424 U.S. 319 1976).We'll generally seek to issue a *Writ of Certiorari* to the APS and the Office of Administrative Hearings/UDHS, and the OLRGC as well. The state is served process and was queried several times as to a cause for no-reply. If the state would supply an Entry of Appearance on a direct challenge and counter-claim, the process will be much simpler for the court.

If the state does not intend to clarify the standing of the APS "Supported" claim after the failure of the District Court to exercise pre-trial discretion, you may state that you would defer to any pre-trial ruling on the statute's constitutionality, or you may state that you would object. The failure of the District Court's diligence will not impede the process.

Sincerely,

Carlos Velasquez

cfv1983@gmail.com

8016710361

[Quoted text hidden]

---

**Carlos V** <cfv1983@gmail.com>

Fri, May 17, 2019 at 3:26 PM

To: Stephen Mikita &lt;smikita@agutah.gov&gt;

These are people's rights, Mr. Mikita. The texture of their lives. If the statute is withstanding it will be easy to define.

This document will be used to define a waiver of reply on the brief. The petition cites grounds by Fed. R. Civ. P. 52(c); the errors in the District Court were not this party's. The state is yet encouraged to define the standing of the "Supported" claim in the United States Court of Appeals, case 19-4041.

5/18/2019

Gmail - Velasquez v. State of Utah--Case # 19-4041--Tenth Circuit Court of Appeals

Appellate Case: 19-4041 Document: 010110171848 Date Filed: 05/21/2019 Page: 19

Thank you, Mr. Mikita.

Sincerely,  
Carlos Velasquez

On Fri, May 17, 2019 at 11:06 AM Stephen Mikita <smikita@agutah.gov> wrote:  
[Quoted text hidden]



United States Courts for the Tenth Circuit  
Office of the Circuit Executive  
1823 Stout Street  
Denver, Colorado 80257  
(303) 844-2067

David Tighe  
Circuit Executive

Leslee Fathallah  
Deputy Circuit Executive

July 23, 2019

Mr. Carlos Velasquez  
1848 Ramona Avenue  
Salt Lake City, UT 84108

Re: Carlos Velasquez v. Circuit Judges Paul J. Kelly, Jr., Carolyn B. McHugh and  
Nancy L. Moritz, District Judge David Nuffer and Magistrate Judge Paul M.  
Warner  
Judicial Complaint Nos. 10-19-90025 through 10-19-90029

Dear Mr. Velasquez:

Your complaint under the Judicial Conduct and Disability Act against the above listed judges was received in this office and assigned the case numbers referenced below:

10-19-90025	Circuit Judge Paul J. Kelly, Jr.
10-19-90026	Circuit Judge Carolyn B. McHugh
10-19-90027	Circuit Judge Nancy L. Moritz
10-19-90028	District Judge David Nuffer
10-19-90029	Magistrate Judge Paul M. Warner

Any future filings or correspondence in this matter should be directed to my office. I will notify you of any actions taken on the complaint. In accordance with Tenth Circuit Misconduct Rule 8.2, I am providing a copy to Chief Circuit Judge Timothy M. Tymkovich, Chief District Judge Robert J. Shelby, and to the subjects of the complaint.

Sincerely,



Leslee Fathallah  
Deputy Circuit Executive

LF:kw

cc: Chief Circuit Judge Timothy M. Tymkovich  
Chief District Judge Robert J. Shelby  
Subject Judges

061



**Facts of the Utah Administrative Case 2246378 from before  
The Office of Administrative Hearings, and the DAAS, Adult  
Protective Services**

50. The incident cited was between the Plaintiff, and  
his mother.

51. The matter was commenced aside from a citation of a  
Misdemeanor Assault, Class B; an incident involving the  
Plaintiff and his mother took precedent. No arrest was  
made, nor any form of immediate protective order.

52. The matter in the Salt Lake City Justice Court  
resolved NOT GUILTY, with interest to Plea in Abeiance,  
diverted to 16 consultations with Valley Behavioral  
Health. No trial was otherwise held (*See Exhibit 8H*).



1 53. The incident was cited 4/25/16 (See Exhibit 7G, Page  
2 15 of 22 of the Police Report appended to the Adult  
3 Protection Report by APS).

4  
5 54. The incident had taken place the day before, 4/24/16,  
6 and the call to law enforcement took place the next day.

7  
8 55. EXCEPTING, on 6/8/2016, after a prolonged period of  
9 waiting after the investigation, a 'Notice of Supported  
10 Finding' reached the respondent (See Exhibit J10,  
11 Evidence Page 8).

12  
13 56. The Notice advises, "A supported finding may  
14 disqualify you from:

- 15 a. being licensed, certified, approved,  
16 or employed by a government agency;  
17 b. Being employed by a service provider,  
18 person, or other entity that contracts with  
19 or is licensed by a government agency; or  
20 c. Qualifying as a volunteer for an  
21 entity described in (a) or (b)."  
22

1 57. The "Supported" claim is a unifying statutory-  
2 forensic interest; every agency in the state uses a  
3 terminology of "Supported"; "Inconclusive"; or "Without  
4 Merit." Most agencies retain reports to a non-volatile  
5 standing, as aside actions of Protective Order.

6  
7 58. The Adult Protection Report is a report of a forensic  
8 investigation, with interest on summary conclusions to  
9 define whether "Abuse of a Vulnerable Adult" took place.  
10 'Forensic Investigation' is not the subject of complaint.

11  
12 59. The APS case worker conducted an interview at the  
13 household on 5/4/16 (See Exhibit 7G, Page 1, first part,  
14 "Victim first seen...").

15  
16 60. A follow-up interview did take place before the issue  
17 of 'Notice,' without any further issue.

18  
19 61. The plaintiff timely responded to the 'Notice of  
20 Supported Finding' within thirty days, and there was issue

1 a 'Notice of Telephonic Hearing,' 7/22/16 (See Exhibit  
2 J10b, Page 2), the date to establish a future hearing,  
3 8/9/16.

4  
5 62. An order and notice of hearing dated 8/15/16 reached  
6 the Plaintiff timely, holding established the date  
7 9/23/16, at 10 AM, to be held at the Office of  
8 Administrative Hearings in Salt Lake City, UT (See Exhibit  
9 J10c, *Evidence* Page 11).

10  
11 63. The hearing was held without any general review of  
12 the report, and a probationary status was offered *sua*  
13 *sponte* by the APS case worker, in the first minutes of  
14 the meeting.

15  
16 64. No transcript of this meeting exists; the matter of  
17 a probationary standing is held proven on a series  
18 electronic messages between the Plaintiff and the APS  
19 case worker (See Exhibit 2B, 9/27/16, *Evidence* Page 118),  
20 and the APS Program Coordinator, who rescinded an offer

1 for a 1-year probationary discourse, "settlement  
2 agreement," 3 classes discussing Abuse of a Vulnerable  
3 Adult

4  
5 "I am sorry to inform you that we will not  
6 be able to do a settlement agreement on  
7 this matter. In reviewing this case it has  
8 come to our attention that you have not  
9 followed through with the court order in  
10 justice court on this and our attorney has  
11 advised us not to do the settlement. If you  
12 have any questions or concerns feel free to  
13 contact me."

14 (See Exhibit 2B, *Evidence* 121, 10/5/16).

15  
16 65. While awaiting the actual continuance, the plaintiff  
17 maintained a dialogue with the APS program coordinator,  
18 attempting to resolve the violation of the Plea in  
19 Abeiance.

20  
21 66. The matter of Plea in Abeiance, wholly separate from  
22 censure, was resolved after much scheduling obstruction  
23 with Valley Behavioral Health, a correction issued on the  
24 Justice Court case general transcript, with a refusal by

1 APS to recognize it (See Exhibit 8H, Transcript 161404060  
2 12-28-16, *Evidence* Page 114.)

3  
4 67. An 'Order of Continuance and Notice of Hearing'  
5 issued 9/27/16; the Administrative Law Judge notes,  
6 somewhat incorrectly, "At an in-person informal hearing  
7 on 9/23/16, Respondent made an oral Motion to Continue  
8 ("Motion") to allow time to consult with an attorney and  
9 to give parties time to discuss settlement."

10  
11 68. The Plaintiff did not provoke a question of Attorney  
12 consultation; the Settlement agreement was offered  
13 informally, and contact information was provided to reach  
14 the program coordinator, an agency officer named Mark  
15 Perry (*See Exhibit 2B, Evidence* Page 118).

16  
17 69. It is worthy to note, no further notices of 'Order  
18 and Notice of Hearing' reached the Plaintiff. While the  
19 Administrative Law Judge does assert it was mailed, those  
20 notices do not arrive, than the Plaintiff is contacted

1 regularly to hear and have re-scheduled the In-Person  
2 Hearing.

3  
4 70. A new telephonic conference was scheduled, 10/18/16  
5 (See Exhibit J10d, *Evidence* Page 15).  
6

7 71. That telephonic conference did take place, however  
8 the 'Order and Notice of Hearing' did not reach the  
9 respondent; the matter however, is moot.  
10

11 72. The APS case worker canceled before said meeting and  
12 a new, 'Order of Continuance and Notice of Telephonic  
13 Hearing,' for 11/8/16. Said notice was mailed, 10/20/16  
14 (See Exhibit J10e, *Evidence* Page 18).  
15

16 73. That 'In-Person Hearing' was also canceled; a new  
17 date was issued, 12/6/16, 'Order of Continuance and Notice  
18 of Telephonic Hearing.' That issued 11/10/16, (See  
19 Exhibit J10f, *Evidence* Page 21).  
20

1 74. The following is partial subject to the Respondents  
2 initial written pleading to Set Aside a Judgment by Order  
3 of Default which issued 1/18/17; the 'Order and Notice of  
4 Hearing' once again did not reach the respondent.

5  
6 75. On January 18, 2017 an 'In-Person Hearing' took  
7 place, and the respondent did not appear, and the  
8 Administrative Law Judge permitted a Motion of Judgment  
9 by Order of Default, citing § 63G-4-209, Set Aside from  
10 Default.

11 "The presiding officer may enter an order  
12 of default against a party, if: (a) A party  
13 in an informal adjudicative proceed fails  
14 to participate in the adjudicative  
15 proceeding."  
16

17 (See Exhibit 4D, Evidence Page 24)

18 The two page order maintains no other prejudice.  
19

20 76. On 1/27/17 the Plaintiff mailed a pleading entitled,  
21 'Motion to Set Aside, Request for Agency Reconsideration,  
22 Counter-Motion for Relief,' a 29-page pleading, generally

1 in order to *Reasonability*, with an apparent variable  
2 motion principally citing 'inadvertence to excusable  
3 neglect' over failure to appear, negative statutory  
4 discipline and § 63G-4-208 (1) & (2),

5  
6 "The presiding officer may use the  
7 presiding officer's experience, technical  
8 competence, and specialized knowledge to  
9 evaluate the evidence."

10 (See Exhibit 1A, Page 3/Page 71  
11 Evidence Pages 69-97)  
12

13 77. The Exhibit 1A elicited the critique against the  
14 applicability the statute, currently held by this party  
15 to challenge whole statutory process against malice, same  
16 page,

17  
18 "The prejudice held against an active  
19 perpetrator of violence against vulnerable  
20 adults, in terms of the measure of the  
21 censure, 'Supported', maintained by Adult  
22 Protective Services, under the Division of  
23 Aging and Adult Services, maintains an  
24 ambiguity of determination in terms of its  
25 admission of potential limitations, and  
26 other possible interpretations entailed."

27 (See Exhibit 1A, Page 3/Evidence Page 71)  
28

29 78. See Exhibit 1A, Page 4, Evidence Page 72;



1  
2 "That someone has knowingly or  
3 intentionally caused harm establishes that  
4 perpetrator should not hide himself from  
5 having committed a violent act (§ 62A-3-  
6 305 (3)&(4)(a)). Intention, beyond  
7 knowledge, speculates about motive, mental  
8 stability, or just relevant context. It  
9 cannot quite be ascertained that such  
10 conditions, in each and every case, create  
11 an absolute picture of an abuser of any  
12 quality or kind. It promotes, rather, only  
13 that the criteria determining the finding  
14 be contingent over the judgment and beneath  
15 its relative humanism. Meaning, a person  
16 described as having committed 'Abuse'  
17 ought to be acknowledged as determinedly  
18 'abusive' in a less general, rather than a  
19 more general description."

20 (See Exhibit 1A, Page 26/*Evidence* Page 94)

21  
22  
23 79. The plaintiff, on Exhibit 1A, made motion to fine  
24 the agency \$25,000 where the claim had been falsified and  
25 made proceeded to order upon the statutory bias, as having  
26 proceeded beyond the constraints of Article IV, Section  
27 2.  
28

1 80. The Administrative Law Judge issued 'Order Denying  
2 Respondent's Motion to Set Aside Default Order' on  
3 2/16/17; citing "mere neglect" to good cause on  
4 appearance, and affirming order by default on three Utah  
5 cases, Airkem Intermountain LLC. v. Parker; Jones v.  
6 Layton/Oakland; State by & through Dept. of Social  
7 Services v. Musselman.

8  
9 81. The Administrative Law Judge also declined the  
10 interest to any other argument,

11  
12 "The undersigned finds that the remainder  
13 of Respondent's Motion raises legal  
14 arguments about the underlying Supported  
15 finding, but is devoid of an explanation as  
16 to why Respondent failed to appear at  
17 hearing. In other words, Respondent's  
18 Motion has failed to allege anything other  
19 than mere neglect alone."

20 (See Exhibit 6F, Evidence Page 30)

21  
22 82.

23 /

24 /

1 Judge held the Respondent to liability for an Alleged  
2 Failure in Service, and divided the court against  
3 recognizing any Meritorious Defense.

4  
5 83. An exhaustion of Administrative Remedies (§ 63G-4-  
6 401) is reached upon a third pleading, 'Request for  
7 Reconsideration In 'Order Denying Respondent's Motion to  
8 Set Aside' (See Exhibit 5E); the Plaintiff attempted to  
9 maintain the prior motion on matters of falsity and  
10 inequitability of the claim, §§ 63G-4-403; 404 (Judicial  
11 review - Type of Relief);

12  
13 "if it should be determined that rules of  
14 informal proceeding cannot grant relief  
15 beyond the above statute, that the censure  
16 made by the agency in its general scope may  
17 exceed its explicit statute, by 63G-4-403,"

18  
19 four separate general statutory provisions which are made  
20 to withstand unconstitutional statutes and informal  
21 administrative rules,

22  
23 "(a) The agency action, or the statute or  
24 rule on which the agency action is based,

1 is unconstitutional on its face or as  
2 applied;

3 (b) the agency has erroneously interpreted  
4 or applied the law;

5 (g) the agency action is based upon a  
6 determination of fact, made or implied by  
7 the agency, that is not supported by  
8 substantial evidence when viewed in light  
9 of the whole record before the court;

10 (h)(i) an abuse of discretion delegated to  
11 the agency by statute;

12 (ii) contrary to a rule of the agency;

13 (iii) contrary to the agency's prior  
14 practice, unless the agency justifies the  
15 inconsistency by giving facts and reasons  
16 that demonstrate a fair and rational basis  
17 for the inconsistency; or

18 (iv) otherwise arbitrary or capricious.”  
19

20 84. The Administrative Law Judge declined all interests

21 from the pleading, and affirmed,  
22

23 “Claimant was afforded an opportunity to  
24 respond to the motion. No response was  
25 received from claimant. Upon review of  
26 Respondent's assertions and arguments in  
27 the Motion, as well as the history of the  
28 case, this tribunal found that Respondent  
29 failed to meet his burden of proving the  
30 default judgment entered against him should  
31 be set aside pursuant to Rule 60(b) of the  
32 Utah Rules of Civil Procedure.  
33 Specifically, this tribunal found that  
34 Respondent was provided actual and legal

1 notice that he needed to appear before the  
2 Office of Administrative Hearings on the  
3 date and at the time set for the hearing,  
4 or have default judgment entered.  
5 Respondent's Motion failed to provide an  
6 explanation as to why Respondent failed to  
7 appear other than mere neglect alone."

8 (See Exhibit 5E, *Evidence*  
9 Page 33-4)

10  
11 85. The final order from the Administrative Law Judge  
12 established the general precedent of the Administrative  
13 case, 2246378, on issue 3/9/17, advised 30 days to  
14 initiate Judicial Review.

15  
16 **Prior Appeals Process in Utah Courts**

17 86.

18 t

19  
20 87.

21 c

22 e

23 e



Plain Statement

1. The two most recent orders must be reconsidered for a Judgment of Default in favor of the plaintiff, an amended Summary of the Case as presented is due, a hearing, any supplemental proceedings may be in order. This document may otherwise constitute a Notice of Appeal.
2. Other remedies are stated under the Recommendations part.
3. The plaintiff considers the court is incorrectly exercised its discretion, and misrepresents the proceeding; The magistrate judge did not promptly reply to motions, including one for a specific summons, a hearing, any queries after the case or the failure of parties for The State of Utah to respond, any requests to directly submit motions; This is self-authentic from any brief review of the docket. (See addenda)
4. Arguments presented are held in that light; the failure of the court's procedural diligence. It is orderly to reconsider the Memorandum entertained of non-responsive forum, and other remedies due subsequent.
5. HELD: It is also construed the court disfavors the interested application of DUCivR 7-4 for the purposes of a Federal court injunction upon a State administrative court and agency. The rule is sustained as ideal for dispositive pre-trial matters, with flexibility of time to respond.

1  
2  
3 22. The presentation of the convention that this is actually a *Mathews v.*

4 *Eldridge* and *Saucier v. Katz* case is sustained from those facts and  
5 arguments on the synthetic paper labeled, 'Genuine Grounds Order by  
6 *Mathews v. Eldridge*, and before Consideration of *Saucier v. Katz*.<sup>20</sup>

7 23. The argument demonstrates the three-part test, as against error, or as  
8 deliberate abuse, casualty of bias, in three separately comprehensive  
9 categories, Pure Due Process risks, Risks Against Persons, Risks of Import  
10 (Meaning of the Government of Interest), these are as respective in order of  
11 the *Mathews* standard, The Private Interest affected, the risk of erroneous  
12 deprivation... through procedures used, the government's interest.

13 24. The *Mathews* standard emphasizes Amendments I, IV, V, VI, and VIII,  
14 sustains argument of the *Devlin v. Smalley* case, the state of Utah violates its  
15 own Titles of Bills Right, for interests of original jurisdictional standing,  
16 Title I.24, Uniform Operation of the laws; promotes a prejudice of  
17 *recidivism* by the same measure of deliberate conspiracy, *preterition*,

---

<sup>19</sup> *Id.*, 1, Pages 10 and 86.

<sup>20</sup> *Id.*, 1, Page 52; 533 U.S. 194 2001.



1 negligence, the plaintiff has suffered an undue subjectivity entirely  
2 damaging to what the State of Utah may yet hold is its original and  
3 compelling government interest.

4 25. Amendments VI and XIV as most general grounds are stated in context  
5 against the question held of *conversion* of a conviction, or liability, process;  
6 and, at the deliberate misappropriation of agency.<sup>21</sup> The question of Judicial  
7 Review is withstanding a speculative tone, as before the officious peer, who  
8 must evaluate the context of a misplaced personal prejudice as above agency  
9 administration under State of Utah law. The culture of law has taken a  
10 discretely *iconoclastic* mood with respect to the provisions of Senate Bill 63  
11 (2008) under Utah Code § 77-38-13. The state of Utah has made altered and  
12 attained the spirit of the rights of crime of victims.

13 26. A clarification of reference to the United States Constitution, the Amended  
14 Bill of rights should always refer to "...the nature and cause of the  
15 accusation," and section one of Amendment XIV. The agency corruptly  
16 abridges immunity and stakes an *as private* administrative privilege,  
17 absconding so the interests defended of measured liberty.

---

<sup>21</sup> *Id.*, 1, Page 19, ¶30-39.

1  
2  
3 31.The usage of the word *certiorari* is a classical liberality, and defines the only  
4 efficient statutory remedy between the separate jurisdictions.

5 32.On any objects in view toward amend, the objections and criticisms made  
6 are derivative of any fault in the Complaint, many of these matters were to  
7 have been addressed before 60 days of process had transpired,<sup>26</sup> and are, by  
8 this time, the failure of respondent parties to make any plain statement or  
9 objection to these minor and amendable problems, derivative the court did  
10 not express any diligence to the Motion for a Summons.<sup>27</sup>

11 33.The cause which should carry the 28 U.S.C. § 1331 jurisdiction are the  
12 Amendment VI and XIV claims,<sup>28</sup> with some limited expression in view of  
13 Article I<sup>29</sup> of United States Constitution, as well Articles IV and VI.<sup>30</sup> The  
14 authentic argument has comprehensive standing from the pre-trial  
15 disposition of an observable legislative conspiracy.

---

<sup>23</sup> *Id.*, 1, Page 111.

<sup>24</sup> *Id.*, 1, Page 109.

<sup>25</sup> *Id.*, 1, Page 117.

<sup>26</sup> Fed. R. Civ. P. 5(i)(1)

<sup>27</sup> Motion for non-standard Summons, at note 1.

<sup>28</sup> Complaint, at note 1, Page 8 ¶5; Page 49 ¶108; Page 64 ¶121(A)(q).

<sup>29</sup> *Id.*, at note 1, Page 18 ¶31; Motion for Hearing, docket no. 10, Page 30-31.

<sup>30</sup> See note 30.

1  
2  
3 64. The Title 5 jurisdiction may simply be unnecessary; 42 U.S.C. Chapter 21

4 generally provisions a broad scope of injunctive relief, not to exclude the

5 *Writ of Certiorari* in order of 28 U.S.C. § 1652, on Utah Code 63G-3-

6 602(3)(b)(iii), which generally instructs the submission of an indexed record

7 to the court made grant review.

8 65. *Rooker-Feldman* doctrine protects generally administrative rules as they are

9 represented issued of a specifically qualified Appellate or Administrative

10 jurisdiction. Feldman could not have petitioned any United States Court for

11 a waiver of a rule without first having had the rule declared unconstitutional,

12 which to his substantive person, it likely was.

13 66. *District of Columbia Ct. of Appeals v. Feldman* (460 U.S. 462), "...the

14 Maryland Board of Law Examiners waived the rule for Feldman." The same

15 question of administrative jurisdiction would recognize, and amount to, the

16 judgment by the District of Columbia bar was failed application for an

17 appeal by permission for a particular exception.

1 106. Because Salt Lake City Justice Court did not find the find the case  
2 (161404060)<sup>56</sup> pursued to a conviction, the value of why the plaintiff was  
3 supportable to a concrete Abuse claim by Utah DAAS/APS is sustained.

4 107. The plaintiff is not merely “[actually] innocent,”<sup>57</sup> the plaintiff is  
5 meritoriously immune; the State of Utah has committed a crime against him,  
6 and his mother, by the sheer act, not merely of a falsified claim, and a  
7 capriciously conducted judicial-administrative process, but by the  
8 misleading form of the presentation of the Utah S.B. 63 (2008) and the §  
9 62A-3-301, *et seq.* application.<sup>58</sup>

10 108. The material order of interest to *McQuiggins v. Perkins*<sup>59</sup> is emphatic,  
11 “a convincing showing of actual innocence enabled habeas petitioners to  
12 overcome a procedural bar to consideration of the merits of their  
13 constitutional claims [to the Supreme Court].”

14 109. In this case, the two are used to support and affirm a tautological  
15 abuse identity as instructed from legislature; that is, it is abused Article IV  
16 power, and communicates a limited privilege to affirm that domestic abuse

---

<sup>56</sup> Complaint, at note 1, page 27.

<sup>57</sup> *Id.*, at note 1, Page 43 ¶93.

<sup>58</sup> *Id.*, at note 1, page 17 ¶30-34; *Id.*, page 102 ¶178.

<sup>59</sup> 569 U.S. 383, at 386

1 cycle, as generally, the respondent's liability. A double indemnification, in-  
2 part *covert* of the interest which prescribed deficient interest and process.<sup>60</sup>

3 110. Consider that the claim made by the Utah agency is magisterial in  
4 form, and its authentic intentions are to supply emergency, and generally *ex*  
5 *parte*, relief in the way of forms of protective order, as immediate gathering  
6 of advocative testimony and evidence; "the Florida Supreme Court held that  
7 the judicial proceedings privilege 'must be afforded to any act occurring  
8 during the course of a judicial proceeding... so long as the act has some  
9 relation to the proceeding.'"<sup>61</sup>

10 111. The matter of issue preclusion is pre-empted the substantive influence  
11 of *Moss* parameters for issue preclusion, "(iii) the issue in the first action  
12 was completely, fully, and fairly litigated; and (iv) the first suit resulted in a  
13 final judgment on the merits."<sup>62</sup>

14 112. In view of *McQuiggins*, the *Mathews*<sup>63</sup> challenge is demonstrated as  
15 comprehensive to preclude sustained interest in a State Agency claim under  
16 28 U.S.C. § 1331 jurisdiction.

---

<sup>60</sup> See Note 43.

<sup>61</sup> *Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, Page 10.

<sup>62</sup> *Id.*, at note 42, Page 8.

<sup>63</sup> See note 4; See note 6.

RECOMMENDATIONS

I. Default Judgment to the Plaintiff

The petition must be granted the *Writ of Certiorari* of preliminary review on merits and United States Constitution, as defined on the Amended Bill of Rights, Amendments VI and XIV, that an administrative action is passed unduly and dispositively under color of protective order, with interest of conspiracy in the State of Utah legislature, plainly to violate rights, so as to harm those individuals respondent with the state's expressive force of immanent, fabricative, feudalistic, and iconoclastic malice.

In addition it must consider that the DUCivR 7-4 rule is perfectly apt for the cause of the vindication of civil right; (1) A partial summary judgment pre-trial, Fed. R. Civ. P. 56; (2) preliminary injunction by Fed. R. Civ. P. 65, the *Writ of Prohibition* pre-trial; (3) and reserved to the trial phase directly, the cause of a *Writ of Execution* by Fed. R. Civ. P. 69.

1 Due, the State of Utah's law conflicts the regular interests of person under  
2 The Older Americans Act of 1965, 42 U.S.C. 35 §§ 3000-3058ff, 3058i at the  
3 interest of protective order, because the Older Americans Act is held on Utah  
4 Administrative Rule R-510-1,<sup>67</sup> that it is fundamentally *to protect* families from  
5 immediate harm persons might themselves commit, as held from the stated  
6 jurisdictional form

7 The court is presently demonstrated interested to a bench trial.

8 The most recent motion for hearing<sup>68</sup> holds the question of Default judgment  
9 to favor the plaintiff, the order must be reconsidered that parties chose not to  
10 respond, and rather have permitted at least one general statement of submission to  
11 any constructive order (See addenda).

12 A new proposed order is appended, and resubmitted via e-mail to the judge  
13 presiding at: utdecf\_nuffer@utd.uscourts.gov.

14 Title 5, Chapter 7 jurisdiction is unnecessary.

15 Jurisdiction is efficient to and of 28 U.S.C. § 1331, the federal question  
16 promotes the remove as from before Utah Office of Administrative Hearings (28

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<sup>67</sup> *Id.*, at note 1, Pages 20-22, ¶36-38

<sup>68</sup> Memorandum Decision; Order of Judgement, at note 1.

1 U.S.C. § 1443) the efficient civil rights case (42 U.S.C. § 1983, not excepting §§  
2 1981; 1986; 1988; or subsequent interest, §§ 1985; 1987; and 28 U.S.C. § 2343),  
3 and Local Rule DUCivR 7-4, for the purposes of any summary or declaratory  
4 judgement (28 U.S.C. §§ 2201; 2202) the court must find of reconsideration the  
5 amended Proposed Order appended, *Writ of Certiorari* (28 U.S.C. §§ 1651; 1652;  
6 this case finding exemption from § 1446 – Procedure for removal of civil actions),  
7 and order the Utah Office of Administrative Hearings to file an indexed version of  
8 its administrative record as normally pursuant Utah Code 63G-3-602(3)(b)(iii),  
9 under Title U.S.C. 28 § 1738.<sup>69</sup>

10 Other agencies ordered to provide relevant documentation pursuant Fed. R.  
11 Civ. P. 26 of Fed. Rs. App. P. 16 and 17, to define the Record on Review, of Local  
12 Rule DUCivR 7-4.

13 The complainant is timely that no bar is withstanding the timeliness for  
14 review of a claim for cause to vindicate civil rights, the plaintiff's diligence  
15 withstanding.

16 The judge may issue the proposed order on reconsideration, order or make  
17 any due amend to it.

---

<sup>69</sup> Motion for Hearing, docket no. 10, Pages 32-42.



1       The Judge may order a hearing before said issue, and recognize any  
2 responsive pleadings (Fed R. Civ. P. 15).

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3       The state's liability cannot protect the decisions of individual actors in this  
4 case, nor the apparatus of the commanding Legislature upon the State of Utah's  
5 Department of Human Services. At variable prejudice, this is the question of the  
6 degree by which government agency, of which it is diversely vested, is dispositioned  
7 against the authentic United States. There is literally no other complete conception.

8       The "[d]eprivation of rights, privileges, [and] immunities," is merely the  
9 subsequent observation of the fabrication of either *material* or *statutory* order.  
10 Conversely, falsification of a document compounded by failure to exercise Judicial  
11 discretion cannot define *structured collusion/structured defamation*,<sup>71</sup> than mitigate  
12 *collusion*.<sup>72</sup>

13       The refined scope of the present case should consider to state: The State of  
14 Utah has deliberately dispositioned a secular right.<sup>73</sup>

---

<sup>69</sup>*Saucier v. Katz*, 533 U. S. 194 (2001).

<sup>70</sup>*Swartwood v. San Diego Cnty. Health and Human Services*, 84 F. Supp. 3d 1093 (S.D. Cal. 2014).

<sup>71</sup>COA Docket No. 10639771, Vol. I, Petition for *Writ of Certiorari*, Grounds *Mathews v. Eldridge*, at Page 136 ¶121(2)(A)(k).

<sup>72</sup>*Id.*, Substantive Argument, at Page 161, ¶s 140-144.

<sup>73</sup>*Id.*, ¶144.

1 This is basic that order is subsequent from the statute, and perfect *ad*  
2 *ministerial* discretion may sustain a dispositive statutory condition, but it will not be  
3 able to guarantee it whenever the volume has exceeded more than a single instance.  
4 Due Process, for this reason, is designed not to conclude process before having  
5 evaluated the comprehensive material.

6 Alternately, Abuses of discretion, failures of perfect discretion, always fit the  
7 humanist mood of speculation, and inferior speculation which can neither amend nor  
8 improve the individual disposition, sufficient to be able to state the action was not  
9 the government's authentic interest.

10 Unless, of course, it was.

11 When an Administrative Law Judge has not evaluated, or responded to,  
12 statements which plainly disposition a claim from effect, and issued judgment, he or  
13 she has violated the First Amendment, and failed to address a plausibly sensitive  
14 question.<sup>74</sup>

15 This was relevant to the Facts of the Administrative Case 2246378.<sup>75</sup>

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<sup>74</sup>*Id.*, Petition for *Writ of Certiorari*, Facts of the Administrative Case, Administrative Argument at Pages 102 – 127.

<sup>75</sup>*Id.*, Petition for *Writ of Certiorari*, Facts of the Administrative Case, at Pages 102-116.

IN THE UNITED STATES COURT OF APPEALS  
for the TENTH CIRCUIT

<p>Velasquez v. State of Utah, by &amp; through Utah Dept. of Human Svcs., <i>et al.</i></p>	<p>Case No. 19-4041 (D.C. No. 2:18-cv-00728-DN) (D. Utah)  PLAINTIFF MOTION</p>
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I. MOTION TO EXPEDITE APPEAL (FED. R. APP. P. 2)

There being no respondent parties interested, or properly commanded, it is orderly to waive a period designated for production of respondent reply briefs. The *Mandamus* petition is appropriately framed of interested Partial Judgment to remand, and some treatment of dialogue with counsel for the State of Utah is presented as relevant.

This motion was originally stipulated on the Certificate of Compliance served with the Opening Brief.

The Opening Brief stipulates that any Entry of Appearance should be entered before ten days have lapsed, to preclude this motion. Ten days elapse after 5/19/20.

END OF ADDENDA