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NO:19-6338

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Gerald Nelson  
Petitioner,

V.

Supreme Court, U.S.

FILED

DEC 13 2019

OFFICE OF THE CLERK

Commissioner of Internal Revenue

Respondent,

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATE COURT OF APPEALS  
FOR THE SECOND CIRCUIT COURT

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PETITION FOR REHEARING

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## **PETITION FOR REHEARING**

**Gerald Nelson v. Commissioner of Internal Revenue**  
**No. 19-6338**

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The petitioner herein respectfully moves this Court for an order(1) Vacating its denial of the petition for writ of certiorari, entered on November 18, 2019, and (2) granting the petition. As grounds for this motion, petitioner states the following:

### **QUESTION PRESENTED**

Whether 28 U.S.C. 1915 violates the Fifth Amendment's guarantee of Equal Protection of the Law as applied and facial to Non-incarcerated pro se litigants (Nelson).

#### **1. THE GRANT OF CERTIORARI IN LOMAX V. ORTIZ-MARQUEZ**

On Oct. 18, 2019, This Court granted certiorari in Lomax v. Ortiz-Marquez, No. 18-8369 ("Lomax") limited to the question of whether " Does a dismissal without prejudice for failure to state a claim count as a strike under 28 U.S.C 1915 (g)."

On February 22, 2019, United States Second Circuit denied Petitioner ("Nelson") leave to proceed in forma pauperis and dismissed his appeal based

On" Neitzke v. Williams, 490 U.S 319, 325 (1989); see also 28 U.S.C. 1915 (e)".

Nelson rehearing request is developed from this Court granting certiorari in Lomax from this Court, and related issues still pending in the case.

Although the instant case involves the 28 U.S.C. 1915 (e), instead of 28 U.S.C. 1915 (g), much of the same consideration are involved, as will be before this Court in Lomax when it considers the question, does a dismissal without prejudice for failure to state a claim count as a strike under 28 U.S.C 1915 (g).

The only significant difference, if there is one, would be that Nelson is not a prisoner locked up in any correctional facility. Nevertheless, 28 U.S.C 1915 gives prisoners three strikes in a civil action.

While the instant case involves 28 U.S.C 1915, much of the same consideration are involved as will be before this Court in the Lomax when it considers the question does a dismissal without prejudice for failure to state a claim count as a strike under 28 U.S.C. 1915 (g).

Nelson disagreed with the Tax Court in the instant case. Nelson presented proof of why he disagreed with the Tax Court. Which was the back pay agreement, that

showed who was responsible for the notice of deficiency (not Nelson).

The Tax Judge totally ignored that the back pay agreement had not been reported to the IRS(see Helveringv. Taylor 293 U.S 507,512 (1935). Nelson appealed to the United States Court of Appeals for the Second Circuit (“Second Circuit”), The Second Circuit denied Nelson In forma pauperis application and dismissed the appeal. Nelson was left in the same position as Mr. Lomax under 28U.S.C. 1915. Nelson did not know why he was in this position because he provided the Second Circuit with true information for his application and appeal **2. 28 U.S.C. 1915 (e) is unconstitutional as applied and facial, to Nelson because prisoners have three strikes under 28 U.S.C. 1915 (g), But free citizens(non-incarcerated) like Nelson do not get 3 strikes before they're banned from applying for in forma pauperis status. This is a violation of Nelson's Fifth Amendment rights. (incarcerated more rights)**

In Watson v. Ault 525 F2d 886,892 (5t circuit 1976), the court held that an IFP action must have arguable substance in law in fact. It described the trial court's determination of the frivolity of prose prisoner' civil rights action under section 1915(D) as " an assessment of the substance of the claim presented,i.e, is there a factual and legal basis, of constitutional dimension, for the asserted wrong,

however inartfully pleaded” Nelson point here is simple, Second Circuit in the instant case never stated whether Nelson action or appeal was frivolous or failed to state a claim. This is the same point that Lomax is making in his question to this Court. This is the precise question that the United States Supreme Court will be answering when the Lomax case comes up for argument and if the question is answered by the Court, it will tell Lomax if he has a strike. A non-incarcerated person does not have a strike system to indicate what is frivolous or failure to state a claim. The Circuit Courts just go back in forth with what is a strike and what is failure to state a claim for incarcerated people (28 U.S.C. 1915 (g), but the non-incarcerated person has no remedy in this area under 28 U.S.C. 1915 (e), because there is no strike system in place. In other words, Mr. Lomax benefited the granting of certiorari from the United States Supreme Court because incarcerated people have a strike system (28 USC 1915 (g). Non-incarcerated people will continue to be treated unfairly, without a strike system in 28 U.S.C 1915, because the strike system determines whether a prisoner’s right has been violated in an IFP. Nelson is a pro se litigant, but that does not mean that Second Circuit should take advantage of him, just because he is not incarcerated. In Fact, no No non-incarcerated person should be taken advantage of due to the unfairness

of a strike system not being in place for non-incarcerated people under 28 U.S.C. 1915. The Fifth Amendment of the United States Constitution States : ... Equal Protection comes into play in the instant case, where the amendment states that no person can be deprived of life, liberty, or property without due process. Due process is an assurance that all legal proceedings will be fair and reasonable.

## CONCLUSION

**For the reason above, as well as those contained in the petition for writ of certiorari, petitioner respectfully asks that this Court grant rehearing of the order of denial, vacate that order, and grant rehearing under rule 44.2.**

**Dated December 12, 2019**

**Respectfully submitted,**

Gerald Nelson  
**Gerald Nelson**  
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I Gerald Nelson hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in rule 44.2.

Gerald Nelson  
**Gerald Nelson**

**Additional material  
from this filing is  
available in the  
Clerk's Office.**