

No. \_\_\_\_\_

**19-7077**

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

\_\_\_\_\_

IMMANUEL F. SANCHEZ,

Petitioner

vs.

STATE OF CALIFORNIA, *et al.*,

Respondents.

\_\_\_\_\_

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

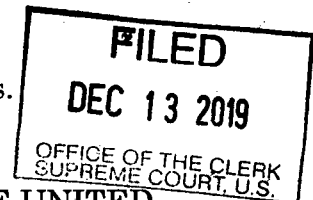
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PETITION FOR WRIT OF *CERTIORARI*

\_\_\_\_\_

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**ORIGINAL**



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## STATEMENT REGARDING ORAL ARGUMENT

Petitioner has a fundamental right to hearing in these proceedings. *See* 28 U.S.C. § 1915(a)(1); *Coppedge v. United States*, 369 U.S. 438, 452 (1962) (“We heard oral argument.”).

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR A WRIT OF *CERTIORARI*

Petitioner respectfully prays that a writ of *certiorari* issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under U.S. Const. Art. III, § 2 and 28 U. S. C. § 1254(1). Petitioner has a constitutional and statutory right to a hearing on the merits of a claim over which the Court has jurisdiction. "The petition for certiorari, pro se, sought reversal of the order of the Court of Appeals denying petitioner's motion for appeal in forma pauperis. ... Such an order is reviewable on certiorari." *Pollard v. United States*, 352 U.S. 354, 359 (1957) (quoting *Wells v. United States*, 318 U.S. 257 (1943)).

QUESTIONS PRESENTED

I. Whether a State that denies public health, medical care, and social services to a particular Citizen without affording him the opportunity to appeal the State's action denies the Citizen procedural and substantive due process in violation of the Due Process Clause of the Fourteenth

Amendment.

II. Whether this denial of public health, medical care, and social services is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969).

III. Whether the dismissal of Petitioner's *in forma pauperis* complaint was an abuse of discretion.

IV. Whether the *in forma pauperis* statute, 28 U.S.C. § 1915 is "DEMONSTRABLY" unconstitutional in part, on its face and as applied to Petitioner.

#### LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows: State of California, County of Los Angeles, Department of Social Services, Director William Lightbourne (as an individual and in his official capacity), Case Worker Donovan Sithan (as an individual and in his official capacity), El Monte Comprehensive Health Center, Dentist Donna Raja (as an individual and in her official capacity), Dentist Leandro S. Arca (as an individual and in his official capacity), Dentist Jonathan Y. Hsu (as an individual and in his official capacity), West Coast Dental Services, Dentist Julio Iniquez (as an individual and in his official capacity), Los Angeles County+USC Medical Center, Doctor Richard Bracken (as an individual and in his official capacity), Dentist Armen Pezeshkian (as

an individual and in his official capacity), Herman Ostrow School of Dentistry of University of Southern California, and Dentist Talley Marlene (as an individual and in her official capacity).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Preamble, Article III, Article VI, and the First, Fifth, Seventh, Ninth, Eleventh, Thirteenth, and Fourteenth Amendments to the Constitution of the United States of America are involved.

The statutes involved are (1) Sections 1981(a), 1983, and 1985(3), Title 42, United States Code; (2) Sections 1951 and 1964(c), Title 18 United States Code; (3) Sections 454, 955, 1331, 1343(a)(1)(3), 1367(a), 1915, and 2403(a), Title 28, United States Code; and (4) Subsection (a)(4), Section 68632, California Government Code.

### STATEMENT OF THE CASE

On July 13, 2018, *pro se* Petitioner commenced a civil action in the District Court for the Los Angeles Central District of California pursuant to the Civil Rights Act, 42 U.S.C. §§ 1985(3), 1983, 1981 and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et. seq.* against the Respondents alleging fraud, bad faith, gross negligence and deliberate indifference, conspiracy to violate and violation of civil rights and RICO, violation of procedural and substantive due process of law, and violation of equal protection. Briefly stated, the complaint alleged that the California State and Los Angeles County officials administering the Medi-Cal

program denied aid without according Petitioner a hearing with the Department of Social Services before an independent state hearing officer at which the applicant may appear personally, offer oral evidence, confront and cross-examine witnesses against him, and have a record made of the hearing.

The Clerk of the Court Kary K. Gray provided to the public with the *Instructional Guide and Forms for Submitting Motions*, including Petitioner, but prepared and provided him with a different Form CV-60 for filing a motion to commence suit *in forma pauperis* that excludes the courtroom, time, and judge filler space. Petitioner completed the form and the Deputy Clerk D.D. filed his "Request to Proceed In Forma Pauperis with Declaration in Support," and "Complaint for Violation of Civil Rights," and failed and refused to permit issuance and service of process of the complaint and summons after Petitioner requested service. Thereafter, the Deputy Clerk Estrella Tamayo in secret and without referring to any law, statute or rule assigned two (2) different Court judges to hear Petitioner's case, with two (2) different courtrooms, and two (2) different calendars contrary to the self-calendaring procedures of the District Court's website of either judge as only one (1) judge in (1) court with one (1) calendar is required for hearing. The Deputy Clerk Estrella Tamayo assigned the case to the calendars of the District Court judge Manuel L. Real and the magistrate judge Alexander F. MacKinnon and a copy of the notice of judge assignment and reference to a magistrate judge appears at Appendix C.

On July 20, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the magistrate judge Alexander F. MacKinnon filed with the Court a Recommendation that Petitioner be denied *in forma pauperis* status and that proceedings be terminated and a copy of the recommended disposition appears at Appendix B. In filing the Recommendation, that Petitioner's "Request to Proceed In Forma Pauperis with Declaration in Support," be denied, the magistrate judge Alexander F. MacKinnon did not file any proposed findings of fact and did not serve or mail a copy of the recommended disposition to Petitioner. The magistrate judge Alexander F. MacKinnon neither held a hearing nor reviewed the actual evidence attached to the "Complaint for Violation of Civil Rights."

On July 26, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the District Court judge Manuel L. Real received and accepted the unserved and unfounded Recommendation and denied Petitioner *in forma pauperis* status and immediately dismissed his case by a summary order before process issued and a copy of the denial or dismissal appears at Appendix B.

On August 24, 2018, Petitioner filed with the Court a "Notice of Appeal" from the order denying his *in forma pauperis* motion and dismissing his case. At the same time, Petitioner filed a "Motion to Appeal In Forma Pauperis; Memorandum of Law; Affidavit; and Notice of Constitutional Challenge" to Federal Statute.

On August 28, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the Clerk of the Court Molly C. Dwyer filed with the Ninth Circuit Court a "Filing Fee Letter" and charged *pro se* Petitioner appearing *in forma pauperis* \$505.00 for Court fees regarding the filing of his "Notice of Appeal." Appendix D

On September 13, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the District Court judge Manuel L. Real took Petitioner's "Motion to Appeal In Forma Pauperis" off his courtroom calendar and referred said motion to the District Court magistrate judge Alexander F. MacKinnon and ignored Petitioner's "Notice of Constitutional Challenge to Federal Statute" and a copy of the referral appears at Appendix E.

On September 20, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the District Court magistrate judge Alexander F. MacKinnon took Petitioner's "Motion to Appeal *In Forma Pauperis*" off his courtroom calendar stating "No appearance is necessary," and send said motion back to the District Court judge Manuel L. Real and ignored Petitioner's "Notice of Constitutional Challenge to Federal Statute" and a copy of the order appears at Appendix F.

On September 25, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the District Court judge

Manuel L. Real denied Petitioner's "Motion to Appeal In Forma Pauperis" and a copy of the denial appears at Appendix G.

On September 27, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the Clerk of the Court Kiry K. Gray and the Deputy Clerk Martha Torres filed with the District Court a "Filing Fee Letter" and charged *pro se* Petitioner appearing *in forma pauperis* \$505.00 for Court fees regarding the filing of his "Notice of Appeal." Appendix H.

On September 28, 2018, Petitioner submitted to the Court a "Notice of Major Fraud against the District Court and Plaintiff" for filing in his case.

On October 2, 2018, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) the Deputy Clerk R. Smith and the District Court judge Manuel L. Real filed with the Court an "Order of the Judge/Magistrate Judge" rejecting Petitioner's "Notice of Major Fraud against the Court and Plaintiff" for filing in his case and a copy of the order appears at Appendix I.

On October 17, 2018, Petitioner filed with the Ninth Circuit Court of Appeals a "Motion to Proceed In Forman Pauperis on Appeal." And on March 20, 2019, Petitioner filed with said Court a "Motion to Vacate and Set Aside Certification that Appeal is not taken in Good Faith."

On May 29, 2019, in secret (i.e., without notice or a hearing and/or one-sided determination or proceedings) circuit judges Edward Leavy, Consuelo



M. Callahan, and Carlos T. Bea denied Petitioner's *in forma pauperis* motion and dismissed the appeal and a copy of the order appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on October 3, 2019 and a copy of the order denying rehearing appears at Appendix J.

### REASONS FOR GRANTING THE PETITION

I. State's action denying public health, medical care, and social services violates procedural and substantive due process in violation of the Due Process Clause of the Fourteenth Amendment.

#### (a) Deprivation of "Procedural" Due Process

Petitioner's complaint specifically alleged that: "The Fourteenth Amendment of the United States Constitution commands that "No State shall ... deprive any person of life, liberty, or property, without due process of law." *See* U.S. Const. Amend. 14, § 1. In defiance of the law, the California State deprived Plaintiff of life, liberty, and property, without due process of law.

To begin, without health one cannot have "enjoyment of life," one will only suffer physical pain, emotional trauma, and mental anguish due to one's ongoing health injury. The California State's actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages to prevent remedy to a Citizen's serious medical problem violates Plaintiff's right to life.

Next, the term "liberty" as used in the "due process" clause denotes not only the right of the Citizen to be free from the mere physical restraint of his

person, as by incarceration, but the term is deemed to embrace the right of the Citizen to be free from the infliction of unnecessary pain; to be free in the enjoyment of good health; to use all his faculties; to live in a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity; to be free to use his powers of mind and body in any lawful calling; to acquire and possess useful knowledge and property; to pursue any avocation or profession; to worship God according to dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Stated differently, "liberty" safeguarded by the "due process" clause is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people.

Lastly, Medi-Cal benefits are protectable "property interest" under the "due process" clause. Here, Plaintiff was falsely deprived of use of state monies for necessary medical care causing him immediate and irreparable damage to his health. Those medical treatments and the state funds to pay for health care, are constitutionally protected "life, liberty, or property" interests and they have been infringed, abridged, and violated by the California State. This deprivation of Plaintiff's constitutionally protected interests in "life, liberty, or property" without notice or a hearing or any process of law "shocks the conscious" and constitutes a violation ... of

Plaintiff's Fourteenth Amendment right to procedural due process. The violation of this constitutional provision is a violation of 42 U.S.C. § 1983."

(b) Deprivation of "Substantive" Due Process

Petitioner further alleged that: "[T]he Due Process Clause ... was intended to prevent government 'from abusing its power, or employing it as an instrument of oppression,' 'to secure the individual from the arbitrary exercise of the powers of government,' 'to prevent governmental power from being used for purposes of oppression,' and to prevent 'affirmative abuse of power.'" *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 196 (1989)." Substantive due process prevents government from oppressing Petitioner by arbitrarily depriving him of a fundamental right. *See Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996). The California State oppressed Petitioner by arbitrarily depriving him of his fundamental right to health care. "Fundamental rights," of kind protected by substantive component of Due Process Clause, are those rights created by the Constitution. *See Greenbriar Village, L.L.C. v. Mountain Brook, City*, 343 F.3d 1258, 1262 (11th Cir. 2003). Here, Petitioner was arbitrarily deprived of his fundamental right created by the Constitution of the United States of America for the purpose of willful oppression in violation of his Fourteenth Amendment substantive due process right not to be subject to oppressive action by the government.

Petitioner's fundamental right to health care is guaranteed to him and protected by the Constitution, laws, and treaties of the United States of America.<sup>1</sup> The right to public health, medical care, and social services is rooted in Amendments 1, 4, 5, 8, 9, 13 and 14, along with penumbras of

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<sup>1</sup> The United Nations Charter, a treaty ratified by the United States of America, is part of the supreme law of this land. Article 25 of the United Nations' Universal Declaration of Human Rights (1948) states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself, including ... medical care and necessary social services." While not a treaty itself, the Declaration was explicitly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" appearing in the United Nations Charter, which is binding on all member states. The 1968 United Nations International Conference on Human Rights advised that the Declaration "constitutes an obligation for the members of the international community" to all persons.

The Declaration has served as the foundation for two binding UN human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under Art. 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, the "States Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Of consequence, Plaintiff is entitled to assert the rights under the treaty since the actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages of the California State are contrary to the international agreement and treaty made under the authority of the United States of America. In fact, the California State denied Petitioner necessary medical care and social services in violation of his human right to health care secured to him and protected by the treaties of the United States of America. The treaty constitutes the supreme law of the land and not the actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages of the California State. The treaty overrides the power of the State of California. In fact, the treaty has supremacy over the California State constitution and laws because the treaty is superior. It is the declared will of the people of the United States of America that every treaty made by the authority of the United States of America shall be superior to the constitution and laws of any individual state.

Fundamental principle of supremacy of law, that crux of constitutional government, requires that all public officials obey mandates of Constitution and valid treaties made under the authority of the United States of America. The California State may not make and enforce actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages that are contrary to federal law. The California State has an obligation, under the supremacy clause, to protect federally guaranteed civil and human rights as zealously as would federal authorities of the United States of America. The right of the people to be secure, safe, and healthy in their persons, shall not be violated. If the people have medical needs which are not being met, it is society's responsibility to meet them. This is the "supreme Law of the Land" and cannot be curtailed and circumvented by the California State. The actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages of the California State denying Petitioner necessary medical care and social services must yield to the treaty as they are inconsistent with and impair the policy and provisions of the treaty in violation of the "supreme Law of the Land" clause of Article VI of the Constitution of the United States of America.

express provisions, and the Declaration of Independence. "The Declaration of the Continental Congress concisely articulates that the inalienable rights of man come from the hand of their Creator, and not as a gift from a benign government. Thomas Jefferson included the health of a free people as a specific right in 'our pursuit of happiness.' ... The health of the people was in the minds of our forefathers when they wrote the Preamble of the Constitution of the United States: 'We the People of the United States, in Order to form a more perfect Union, \* \* \* promote the general Welfare \* \* \*.' ... 'The health of free people is forever present in the minds of free men.'" *Ellis v. City of Grand Rapids*, 257 F.Supp. 564, 572 (1966) (emphasis added).

"From its foundation the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'"

*Goldberg v. Kelly*, 397 U.S. 254, 264-265 (1970).

The Preamble of the Bill of Rights of the United States provides “in order to prevent misconstruction or abuse of its power, that further declaratory and restrictive clauses should be added.” Although the right to health care is not specifically enumerated in the Constitution of the United States of America, such right exists as other rights retained by the people under the Ninth Amendment to the Constitution. The Ninth Amendment provides, “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” *See* U.S. CONST. Amend. 9.<sup>2</sup> In fact, Petitioner’s fundamental personal right to health care is implicitly guaranteed to him and protected by the Ninth Amendment of the Constitution of the United States of America because such right to health care is not set forth in the Constitution. Rather than enunciating a particular affirmative right, the Ninth Amendment serves to protect other fundamental rights that are not set forth in the Constitution of the United States of America.

The fundamental right to health care is deeply rooted in this Nation’s history and tradition, and in the conscience of the good decent American people, and such right is implicit in the concept of ordered liberty, such that neither life, liberty, nor property would exist if health was sacrificed.

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<sup>2</sup> The fundamental personal right to privacy is not explicitly mentioned in the Bill of Rights, but such right exists as other rights retained by the people under U.S. Const. Amend. IX. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). And any state law, regulation, statute, policy, custom and usage that denies or abridges the rights retained by the people under U.S. Const. Amend. IX is invalid and void. *Id.*

In January 11, 1944, United States President Frank Delano Roosevelt crafted his "Second Bill of Rights." He declared 'freedom of want' to be one of four essential liberties for human security. His definition of freedom included, "the right to adequate medical care and the opportunity to achieve and enjoy good health." State of the Union Message to Congress, Presidential Library and Museum.

In January 7, 1965, President Lyndon B. Johnson in a special message to Congress proclaimed: "Our first concern must be to assure that the advance of medical knowledge leaves none behind. We can— and we must — strive now to assure the availability of and accessibility to the best health care for all Americans, regardless of age or geography or economic status." U.S. Code Congressional and Administrative News, No. 1, Feb. 5, 1965, at 13-14, 16, 21.

In 1989, the largest American health care organization, the American Medical Association, scribed a document on "Patient's Bill of Rights" that includes a statement that patients have a "right to essential health care."

In *Brown v. Plata*, 563 U.S. 493, 510-511 (2011), Justice Kennedy declared, that indigent American Citizens "retain the essence of human dignity inherent in all persons," and human dignity includes a right to health care.

In February 17, 2012, a legislator from the State of New Mexico, stated in an editorial, "Health care is a fundamental right that is an essential safeguard of human life and dignity."

In September 13, 2017, United States Senator Bernie Sanders and 15 Senate co-sponsors prepared and submitted the Medicare for All Act of 2017, S. 1804-115th Congress (2017-2018), which states: "Every individual who is a resident of the United States is entitled to benefits for health care services. ... The beneficiary has the right to have services provided by health providers for whom payment would be made under this Act."

Petitioner's right to health care is recognized by the Ninth Amendment of the Constitution of the United States of America as it is recognized by teachings of history and basic values that underlie the American society and is encompassed within the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States of America and it is thus fully applicable against the California State under 42 U.S.C. §§ 1983, 1985(3).<sup>3</sup>

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<sup>3</sup> The pertinent part of Section 1 of the Fourteenth Amendment provides "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And section 5 expressly empowers Congress to enforce by appropriate legislation the provisions of the article. 42 U.S.C. § 1983, provides in presently pertinent part that "every person who, under color of any custom, or usage, of any State, subjects, or causes to be subjected, any citizen of the United States 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." And 42 U.S.C. § 1985(3), provides among other things that "if two or more persons in any State conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, and if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and



II. State's action denying public health, medical care, and social services is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Petitioner is an indigent suffering a dental and health injury and the California State and Los Angeles County and its medical facilities denied him necessary medical care pursuant to a California policy.

"Under [California] law, the individual county governments are charged with the mandatory duty of providing necessary hospital and medical care for their indigent." *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 252 (1974). But the policy requires an indigent to have to pay money for medical care and services, money that he does not have because he is destitute.

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exercising any right and privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

The right to the enjoyment of life, liberty, and property does not find its source in U.S. Const. Amend. XIV, § 1. That constitutional provision was not designed to create or vest rights of that nature. It was intended to safeguard and protect the individual against deprivation of such rights under color of State authority, without due process and equal protection. But § 1983 does not undertake merely to protect rights and privileges derived from the Constitution of the United States of America. It makes unlawful the willful deprivation under color of State authority of any right, privilege, or immunity secured or protected by the Constitution. It brings within its ambit the willful deprivation under color of State authority of any right, privilege, or immunity which is guaranteed by the Constitution. It does not include wrongful acts of officers of the state or county solely in their personal pursuits. But it does bring within its ambit any willful deprivation under color of State authority of any right, privilege, or immunity which is guaranteed by the Constitution of the United States of America. And the denial of necessary medical care or cruel and unusual treatment of indigent Citizens by state and county officials, not in their personal pursuits but under color of official authority solely for the purpose of destroying his dental and general health, constitutes deprivation of rights, privileges, and immunities guaranteed by the Constitution, laws, and treaties of the United States of America. Accordingly, the defendants, and each of them, are liable to Plaintiff's for damages caused by such deprivation or injury under § 1983, and Plaintiff may recover monetary damages under § 1983 and § 1985(3).

The Respondents refused to admit Petitioner to its public hospital, clinic, or medical facility solely because he is indigent. There is no health or medical care for the indigent in the California State and Los Angeles County. This requirement for providing medical care to indigents violates the Equal Protection Clause. The very high price and money payment requirements for providing medical care to indigents created two classes of needy residents indistinguishable from each other except that one is composed of residents who can and have paid money for medical care and second class of residents who cannot afford to pay for medical care. On the basis of this sole difference the first class was granted medical care and second class was denied medical care upon which may depend the ability to obtain the very means to subsist.

This classification impinges on Petitioner's constitutionally guaranteed right to be free from slavery and involuntary servitude and operates to penalize those persons who have exercised their constitutional right of health care. The California State policy is unconstitutional and invalid. The policy penalizes Petitioner for his indigency and medical need. What would be unconstitutional if done directly by the California State can no more readily be accomplished by a county at State's direction. The policy impinges on Petitioner's constitutionally guaranteed and protected right to be free from slavery and involuntary servitude. The policy is a penalty upon the exercise of the constitutional right of health care. The denial of medical or health care is done intentionally to coerce or force indigents to work or labor for

oppressive hours, salary, working conditions, or treatment in order to pay money for the necessary medical care and enslave the residents of the California territory.

The denial of the basic “necessities of life,” a fundamental constitutional right is a penalty. “[M]edical care is ... “a basic necessity of life” to an indigent. ... It would be odd ... to ... deny him the medical care necessary to relieve him from the [pain] that attend his [medical condition].” *Memorial Hospital v. Maricopa County*, 415 U.S. at 259-260. Petitioner was an indigent person who required continued medical care for the preservation of his dental and general health and well being, even if he did not require immediate emergency care. The State could not deny an indigent person care just because, although in a lot of pain, he was not in immediate danger of life. To allow a serious medical condition, to go untreated is to subject sufferer to the danger of substantial and irrevocable deterioration in his health. Medical conditions, if untreated become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment. The right of health care must be seen as insuring all residents the same right to health care in the States to which they reside as are enjoyed by other residents. The State of California’s requirement for medical care penalizes indigents for exercising their right to

health care. Accordingly, the classification created by the financial requirement is unconstitutional. *Id.*, at 261-262.

III. The dismissal of Petitioner's *in forma pauperis* complaint was an absolute abuse of discretion giving right to *certiorari* review

"Construing petitioner's ... pleading liberally, as *Haines v. Kerner*, 404 U.S. 519 (1972), instructs the federal courts to do so in *pro se* actions, it states a cause of action. ... [T]he Court of Appeals or the District Court; both courts relied solely upon erroneous legal grounds for dismissing the complaint." *Boag v. Arizona*, 454 U.S. 364, 365 (1982).

In *Nietzke v. Williams*, 490 U.S. 319, 327 (1989), "a court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless.'" *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (emphasis mine). Under the "clearly baseless" guidepost Petitioner's complaint cannot be dismissed because the factual allegations are supported, substantiated, and corroborated by real documentary and testimonial evidence. The dismissal was clearly erroneous. Additionally, "[t]he district court's equating failure to state a claim with frivolousness was error." *Adams v. Hansen*, 906 F.2d 192, 193 (5th Cir. 1990). "[T]he District Court had wrongly equated the standard for failure to state a claim under Rule 12(b)(6) with the standard for frivolousness under § 1915(d).".

In fact, the dismissal of both courts was "clearly erroneous" under *Nietzke*, *Denton*, and *Adams*, and the result of "bias and prejudice" against Petitioner, and constitutes a willful abuse of discretion, malfeasance, and

attempted extortion under color of official right amounting to injury and usurpation of judicial power.

The dismissal of both courts displayed a deep-seated antagonism, animosity, or antipathy towards Plaintiff evidencing extreme bias. The judicial rulings are egregiously erroneous and demonstrate that both courts used false, fictitious, and fraudulent statements, intentionally committed malfeasance and attempted extortion, violated Petitioner's fundamental constitutional rights to proceed *in forma pauperis* and to due process of law, and disregarded the law. Both courts acted beyond their lawful authority with knowledge that its actions were beyond its authority and with conscious disregard for the limits of its authority. The actions of both courts were part of a pattern of failing to ensure the fundamental rights of *pro se* litigants appearing *in forma pauperis* and constitute a clear abuse of discretion giving right to *certiorari* review.

Indeed, notifications required by Rule 29.4(b) have been made. On August 24, 2018, Petitioner filed a notice of constitutional challenge to federal statute pursuant to 28 U.S.C. § 2403(a) bringing into question the constitutionality of the *in forma pauperis* statute, 28 U.S.C. § 1915(e)(2), the very statute the judicial officers are attempting to enforce, and the District Court judge ignored his mandatory duty to certify such fact to the Attorney General. *Wallach v. Lieberman*, 366 F.2d 254, 258 (2nd Cir. 1966) ("certification is mandatory."); *Merill v. Addison*, 763 F.2d 80, 82 (2nd Cir.

1985) (“the obligation to certify rests with the court, not with the parties. ... [T]he notice [is] not ... discretionary. ... Certification is thus a duty of the court that should not be ignored.”) (emphasis added); *Pleasant-El v. Oil Recovery Co.*, 148 F.3d 1300, 1302 (11th Cir. 1998) (“wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General.”). The district court failed to follow the statutory requirements for due process in constitutional challenge to federal statute proceedings under the authority of *Wallach*, *Merill*, and *Pleasant-El* and intentionally committed malfeasance and displayed extreme bias against Petitioner.

Moreover, the dismissal of both courts shows that the judge attempted to extort Petitioner under color of official right in violation of 18 U.S.C. § 1951. The courts attempted to extract payment from *pro se* Plaintiff appearing *in forma pauperis* on the false ground that it is due to him as a court fee. See Extortionists Letters-Appendix E, I. “[E]xtortion ‘under color of official right,’ and ... the defendant, a justice of the peace, had extracted a payment from a litigant on the false ground that it was due him as a court fee.”). *McCormick v. United States*, 500 U.S. 257, 279 (1991). In fact, the courts dismissed Petitioner’s factually and legally meritorious action or appeal solely to extract payment from him as a court fee. Therefore, both courts attempted to extort Petitioner under color of official right and displayed extreme bias against him.

“The constitutional right of access to the courts ... encompass a right not to have to pay legal fees that could bar [Petitioner] from asserting basic rights. [D]ue process clause prohibits [the government] from denying individual ... unable to pay required fees [his] right of access to civil courts to obtain [judgement].” *Brown v. Grabowski*, 922 F.2d 1097, 1113 n. 10 (3rd Cir. 1990). Here, the courts required Petitioner to pay court fees and barred him from asserting basic rights in violation of due process of law under *Brown*.

IV. The *in forma pauperis* statute, 28 U.S.C. § 1915 is “DEMONSTRABLY” unconstitutional in part, on its face and as applied to Petitioner.

On its face 28 U.S.C. § 1915(e)(2) is unconstitutional because it considers factors that are not germane to the eligibility requirements set out in 28 U.S.C. § 1915(a)(1) and fails to consider important factors that are germane to the statutory purpose and constitutes, as a matter of law, a subterfuge to perpetrate a fraud or to evade the *in forma pauperis* requirements under 28 U.S.C. § 1915(a)(1), which are (1) process issued and served; and (2) notice and hearing of any motion thereafter made by defendant or the court to dismiss the complaint and the grounds therefor. *Potter v. McCall*, 433 F.2d 1087 (9th Cir.1970); *Harmon v. Superior Court*, 307 F.2d 796 (9th Cir. 1962). And which “includes proceeding to final judgment.” *In re Marriage of Reese*, 73 Cal.App.3d 120, 125 (1977) (quoting *Boddie v. Connecticut*, 401 U.S. 371 (1971)).

Cal. Gov. Code, § 68632, subd. (a)(4), protects the same right and does not consider all of the factors detailed in 28 U.S.C. § 1915(e)(2). Furthermore, “[t]he purpose of § 1915 is to provide an entre, not a barrier, to the indigent seeking relief in the federal court.” *Souder v. McGuire*, 516 F.2d 820, 823 (3rd Cir. 1975); *Jones v. Zimmerman*, 752 F.2d 76, 79 (3rd Cir. 1985). In fact, § 1915(e)(2) violates the very purpose of 28 U.S.C. § 1915 because it creates a barrier to indigent seeking relief in the federal court contrary to the purpose of the *in forma pauperis* statute under *Jones* and *Souder*. 28 U.S.C. § 1915(e)(2) creates a barrier precluding access all together that impair an indigent’s ability to enter the door of the courthouse in pursuit of legitimate grievances in violation of Petitioner’s fundamental right of access to the courts secured to him and protected by the First and Fifth Amendments to the Constitution of the United States of America. “[T]he right of access to the courts encompasses the right to pursue grievances against the government without inappropriate governmental interference during the course of that litigation.” *Hart v. Gaioni*, 354 F.Supp.2d 1127, 1131 (C.D.Cal. 2005).

(1) Violation of First Amendment Right to Proceed *In Forma Pauperis*

28 U.S.C. § 1915(e)(2) violates Petitioner’s First Amendment right to commence a meritorious civil suit, action, or appeal *in forma pauperis* because it denies him equal access to the courts and a fair hearing of his claims. § 1915(e)(2) creates a barrier to an indigent seeking to recover his property and vindicate his rights in federal court precluding access all



together that impair his ability to enter the door of the courthouse in pursuit of legitimate grievances against the government and its officers.

(2) Violation of Fifth Amendment Right to Notice and Hearing

28 U.S.C. § 1915(e)(2) violates Petitioner's Fifth Amendment right to notice and hearing because it denies him an opportunity for hearing. A hearing without notice is not a hearing. It is improper or unlawful to deny an *in forma pauperis* motion without a hearing based on the judicial officer's *ex cathedra* determination. *See Cruz v. Superior Court*, 120 Cal.App. 175, 189 (2004). § 1915(e)(2) incorporates or codifies the odious doctrine of judicial absolutism and authorizes judicial officers to determine case without hearing or to conduct secret, one-sided determinations of facts decisive of rights.

(3) Violation of Fifth Amendment Right to be Free from Fraud

28 U.S.C. § 1915(e)(2) violates Petitioner's Fifth Amendment right to be free from fraud. *Boyce's Executors v. Grundy*, 28 U.S. 210, 220 (1830) ("the law ... abhors fraud.") *Fraus legibus invisissima*, "Fraud is most hateful to law." § 1915(e) authorizes judicial officers to freely practice fraud and file false statements, writings, or documents in the District Court or Court of Appeals to defraud and cheat an indigent of his property and/or obtain dismissal of his *prima facie* case or appeal directly through fraud.

(4) Violation of Fifth Amendment right to be Free from the Practice of Law by United States Officers

28 U.S.C. § 1915(e)(2) violates Petitioner's Fifth Amendment right to be free from the practice of law by judges, magistrates, or court clerks. *See* 28 U.S.C. §§ 454, 955; *United States v. Bosch*, 951 F.2d 1546, 1551 n. 1 (9th Cir. 1991) ("outlawing the practice of law by judges, magistrates, and court clerks respectively."); *Audett v. United States*, 265 F.2d 837, 840 (9th Cir. 1959) ("Congress ... prohibit[ed] the practice of law by ... judges of the courts ... or court clerks."). § 1915(e)(2) authorizes judicial or court officers to figuratively speaking, step down from the bench and assume the role of advocate for the defendants in the action. And in that role to exceed the proper bounds of advocacy and make *sua sponte* motion to dismiss either for "failure to state a claim upon which relief could be granted" or "immunity" on behalf of the defendants assuming the appearance of an adversary rather than a neutral. *Young v. Kansas*, 890 F.Supp. 949, 951 (D. Kan. 1995) ("it is not the proper function of the district court to assume the role of advocate for ... litigant.")

Motions to dismiss of that nature are appropriate before the Court by the defendants and not the judge, magistrate, or court clerk. *See e.g.* *Gonzalez v. City of Chicago*, 888 F.Supp. 887 (N.D.Ill 1995) (Attorney for the defendants Susan S. Sher and several other attorneys filed motion to dismiss); *see also Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997) (motion to dismiss filed by attorney for the defendant). § 1915(e)(2) authorizes judicial officers to be players rather than umpires and file motions to dismiss for the

defendants. *Rose v. Superior Court*, 81 Cal.App.4th 564, 570 (2000) (“Judges should be umpires rather than players.”).

“Where a public official has or may have a defense based on ... immunity, the burden is on the official to raise the defense and establish his entitlement to immunity. ... [D]ismissal of the complaint pursuant to 28 U.S.C. § 1915 is not appropriate in such cases.” *Henriksen v. Bentley*, 644 F.2d 852, 856 (10th Cir. 1981) (quoting *Gomez v. Toledo*, 446 U.S. 635 (1980)). “[A] federal court need not address the issue of ... immunity if neither party brings it to the attention of the court.” *Baltimore County v. Hechinger Liquidation Trust*, 335 F.3d 243, 249 (3rd Cir. 2003) (quoting *Wisconsin Dep’t. of Corrections v. Schacht*, 524 U.S. 381, 389 (1998)).

(5) Violation of Fifth Amendment Right to a Tribunal Free from Bias

28 U.S.C. § 1915(e)(2) violates Petitioner’s Fifth Amendment right to a tribunal free from bias. *In re Richard W.*, 91 Cal.App.3d 960, 967 (1979) (“Appellant asserts a denial of his constitutional right to a trial by a ... judge ... who is not biased against him.”); *United States v. Sciuto*, 531 F.2d 842, 845 (7th Cir. 1976) (“It has long been recognized that freedom of the tribunal from bias or prejudice is an essential element of due process.”); *United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (Plaintiff “is entitled to trial before a judge who is not biased against him at any point of the trial.”); *In re Murchison*, 349 U.S. 133, 136 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires

absence of actual bias in the trial of cases.”).

§ 1915(e)(2) authorizes a judge to issue a ruling on his own motion based entirely on personal knowledge of the defendants creating the appearance of favoritism. *Ann. Rept. (2003) Advisory Letter 12*, p. 27. Additionally or alternatively, § 1915(e)(2) authorizes a judge to go forward with a motion hearing in the absence of *pro per* Plaintiff creating the appearance of antagonism. *Ann. Rept. (2005) Advisory Letter 1*, p. 26; *Bias Against Pro Per Litigants, Nolo Press* (April 4, 1997).

(6) Violation of Fifth Amendment Right to be Free from Extortion Under Color of Official Right

28 U.S.C. § 1915(e)(2) violates Petitioner’s Fifth Amendment right to be free from civil extortion under color of official right. *See* 18 U.S.C. § 1951.

§ 1915(e)(2) authorizes judicial officers to demand or charge money payment from a litigant on the false ground that it is due to him as a court filing fee, in that the judicial officers on the false ground that the action or appeal is frivolous attempted to extract money from him for filing fees that are due upon the filing of a complaint or notice of appeal. § 1915(e)(2) permits judicial officers to dismiss a factually and legally meritorious complaint or appeal solely to extract payment from litigant under color of official right. *See e.g., McCormick v. United States*, 500 U.S. at 279 (“[E]xtortion ‘under color of official right,’ and ... the defendant, a justice of the peace, had extracted a payment from a litigant on the false ground that it was due him as a court fee.”)

§ 1915(e)(2) allows judicial officers to sell right, justice, and law. A judicial officer's acceptance of subject-matter jurisdiction over a meritorious case that has been wrongfully deemed frivolous upon receipt of a money payment is a sale of the law. *Ann. Rept. (2010) Private Admonishment* 5, p. 24 ("a judge maintained a practice of requiring the ... plaintiff to pay ... [a] fee before a judgement would be issued."); *Burns v. Ohio*, 360 U.S. 252, 258 (1959) ("The imposition by the State of financial barriers restricting the availability of appellate review for indigent ... has no place in our heritage of Equal Justice Under Law."); *Smith v. Bennett*, 365 U.S. 708 (1961) ("to interpose any financial consideration between an indigent ... of the State and his exercise of a ... right to sue for his liberty is to deny ... [him] the equal protection of the laws."). § 1915(e)(2) puts judicial officers freely and openly on the path of corruption selling the law, right, and justice to the public, including Petitioner.

**(7) Violation of Seventh Amendment Right to Trial by Jury**

28 U.S.C. § 1915(e)(2) violates Petitioner's Seventh Amendment right to trial by jury because it denies him the benefit of a trial of the fact issues before a jury.

**(8) Violation of Ninth Amendment Right to the Truth In Evidence**

28 U.S.C. § 1915(e)(2) violates Petitioner's Ninth Amendment right to the truth in evidence because it excludes any and all relevant oral and documentary evidence in civil proceedings.

(9) Violation of Eleventh Amendment Right to Commence a Suit for Injunctive Relief against One of the United States

28 U.S.C. § 1915(e)(2) violates Petitioner's Eleventh Amendment right to commence a suit for injunctive relief against the State of California to prevent the enforcement of a State policy on the ground of its unconstitutionality under *Ex parte Young*, 209 U.S. 123 (1908).

(10) Violation of Thirteenth Amendment Right to be Free from Slavery and Involuntary Servitude

28 U.S.C. § 1915(e)(2) violates Petitioner's Thirteenth Amendment right to be free from slavery and involuntary servitude. *Misera est servitus ubi just est vagum aot incertum*, "It is misery slavery where the law is vague or uncertain." The statutory language in § 1915(e)(2)(B), to-wit: "frivolous," "fails to state a claim on which relief may be granted," and "immunity" is unconstitutionally vague and ambiguous creating conflict, confusion, and misunderstanding designed to terminate an indigent Citizen's constitutional or statutory rights without notice, hearing, and opportunity to appeal by permitting dismissal on arbitrary or irrational basis. In fact, § 1915(e)(2)(B) does not define with precision and clarity the statutory language and permits judicial officers to usurp power to dismiss an indigent's meritorious legal claims for want of jurisdiction, immunity or frivolousness amounting to misery slavery, as a matter of fundamental axiom of law. *See e.g. Scott v. Sandford*, 60 U.S. 393 (1857).

The language in § 1915(e)(2)(B) authorizes judicial officers to dismiss an indigent's meritorious complaint on the ground of "lack of subject-matter jurisdiction," a ground which is not articulated or detailed in § 1915(e)(2)(B), or on the ground of "fails to state a claim on which relief may be granted," a ground which is articulated or detailed in Fed. R. Civ. P. 12(b)(6), or on the ground of "immune from such relief," or on the ground of "frivolous" allowing judicial officers to apply the incorrect legal standard when addressing the question of frivolous, jurisdiction or immunity for the purpose of slavery.

**(11) Violation of Fourteenth Amendment Right to Equal Protection**

28 U.S.C. § 1915(e)(2) violates Plaintiff's Fourteenth Amendment right to sue, be a party, give evidence, and to the full and equal benefit of all laws and proceedings for the security of his person and property because it authorizes judicial officers to terminate any and all of an indigent's constitutional or statutory rights without notice, hearing, and opportunity to appeal by permitting dismissal of suit, action, appeal or proceeding on discriminatory basis.

**(12) Violation of Article III Right to Hearing on the Merits of a Claim Over which the Court has Jurisdiction**

28 U.S.C. § 1915(e)(2) violates U.S. Const. Art. III, § 2 because it strips or withdraws the jurisdiction of the District Court under 28 U.S.C. §§ 1331, 1343(a)(1)(3), 1367(a). The statute, § 1915(e)(2) limits the jurisdiction of the United States district courts. *Kontrick v. Ryan*, 540 U.S. 443, 553-554 (2004)


("These [statutes or] rules shall not be construed to ... limit the jurisdiction of the United States district courts.").

### CONCLUSION

For any or all of the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Date: December 13, 2019

Respectfully submitted,

By:   
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Petitioner *in pro se*