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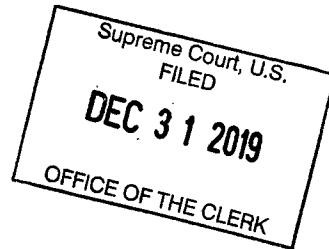
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Joseph A. Brown-EL — PETITIONER
(Your Name)



vs.

Dr. Sage (Psych Dept.) — RESPONDENT(S)
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals - 3rd Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph A. Brown - EL
(Your Name)

FEDERAL CORRECTIONAL Complex-USPI
P.O. Box 1033

(Address) Coleman, Florida 33521-1033
✓

(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED - ~~ON APPEAL~~

1. Whether the disposition of Brown V. Profit, ET AL., C.D. Cal. Civ. No. 13-CV-02338, Qualifies AS A STRIKE for purposes of 28 U.S.C. § 1915 (g);
2. Should this Court decide on the "Writ of Certiorari" that the Petitioner Qualifies for In Forma Pauperis, whether this decision will be the law of the land;
3. Can a plaintiff (Petitioner) concerning a civil lawsuit Accrue a Strike (X) before In forma pauperis status is granted;
4. Clarify when is a case considered "filed" or "brought" concerning 28 U.S.C. § 1915 (g);
5. Was the Chief Judge Smith's opinion partial and biased in his decision;

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LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

- ✓ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
- 1) Joseph A. Brown-EL v. Dr. Sage; Dr. Eigendrode; Dr. Showey
 - 2) Joseph A. Brown-EL v. C.O. Kemmerer; U.S.; B.R. Pealer; T. Crawford; C.O. J. Young; C.O. J. Treibly; C.O. J. Hardy; Lt. R. Miller; C.O. D. Herr; C.O. A. Craveling; C.O. Finck; C.O. R. Wickham; Lt. Sherman; Lt. Dough; Lt. Seeba; Lt. R. Johnson; Lt. P. Carrasquillo; P.A. S. Dees; P.A. Potter; P.A. Brennaman; P.A. Miosi; J. Carpenter; J. Russo
 - 3) Joseph A. Brown-EL v. Sarah Dees, Physician Assistant

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• Fontroy v. Owens, No. CV 12-4679, 2012 WL 4473216 (E.D. Pa. Sept. 28, 2012)	20
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Attached

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Opinion of the Court of Appeals (Direct); Fuentès, Circuit Judge
- "A strike under §1915 (g) will accrue only if the entire action or appeal is (1) dismissed explicitly because it is 'frivolous,' 'malicious,' or 'fails' to state a claim, or (2) dismissed pursuant to a statutory provision or rule that is limited solely to dismissals for such reasons. *Id.* at 126.
- In *Byrd v. Shannon*, a dismissal "does not rise to the level of a strike," unless it is a dismissal with prejudice. See *Millhouse*, 866 F.3d at 161.
- In *Gibbs v. Ryan*, it was clarified that, "in the context of filing a civil action, 'bring' ordinarily refers to the initiation of legal proceedings in a suit". See 160 F.3d 160, 162 (3d Cir. 1998) (citing *Black's Law Dictionary* 192 (6th Edition 1990)).
- Gibbs complaint was filed, and his actions was 'brought' when his motion to proceed in forma pauperis was granted. *Id.* See also e.g., *Millhouse*, 866 F.3d at 158-59.
- See *Urrutia*, 91 F.3d at 458 n.13 ("Submitting an in forma pauperis complaint to the clerk does not result in commencement of the litigation").
- In contrast, in *O'Neal v. Price*, the 9th Circuit concluded that a Plaintiff has 'brought' an action for the purposes of §1915 (g) when he submits a complaint and request to proceed [IFP] to the court. See 531 F.3d 1146, 1152 (9th Cir. 2008).

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A (154) to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A(1-5) to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCTOBER 30, 2019.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

- The Petitioner, Joseph A. Brown-EL, filed (3) pro-se civil-Rights actions under BIVENS v. SIX UNKNOWN AGENTS AFTER SUFFERING MISTREATMENT from (USP) LEWISBURG PRISON STAFF. THE COMPLAINTS CONTAINED VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS.
- IN THE PROCESS OF FILING THE CIVIL-COMPLAINTS, MR. BROWN-EL FILED TO PROCEED IN FORMA PAUPERIS IN EACH CASE. HOWEVER, THE DISTRICT COURT DENIED THE [IFP] APPLICATIONS CLAIMING THAT MR. BROWN-EL HAD ACCRUED (3) STRIKES IN PRIOR CASES UNDER 28 U.S.C. § 1915 (g) IN THE 9TH CIRCUIT (EDC, CDC). THIS IS THE ARGUMENT.
- ONE OF THE CASES THAT MR. BROWN-EL HAD ALLEGEDLY ACCRUED A STRIKE, BROWN v. PROFFIT (IN WHICH THE COURT ISSUED MR. BROWN-EL A STRIKE DURING SCREENING BEFORE IN FORMA PAUPERIS WAS GRANTED); IS IN DISPUTE AMONGST THE CIRCUITS, AND HAS CAUSED A SPLIT BETWEEN THE CONSERVATIVE, AND LIBERAL COURTS ON THIS ISSUE OF WHEN SHOULD A CIVIL-ACTION BE DEEMED 'FILED OR BROUGHT'.
- THE QUESTION BECOMES WHETHER A PETITIONER CAN BE ISSUED A STRIKE UNDER 28 U.S.C. § 1915 (g) BEFORE THE IN FORMA PAUPERIS APPLICATION IS GRANTED AS THE LIBERAL CIRCUITS HAVE DONE BASED ON SCREENING OF THE (ACTION) COMPLAINT. WHILE THE CONSERVATIVE COURTS HAVE STOOD ON THE SIDE OF, 'A COMPLAINT IS NOT 'FILED' OR 'BOUGHT' UNTIL IN FORMA PAUPERIS HAS BEEN GRANTED.
- THIS ISSUE IS AN ON-GOING CONFLICT CONCERNING THIS IMPORTANT MATTER, AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THAT IT CALLS FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

REASONS FOR GRANTING THE PETITION

- The REASONS that the Supreme Court should grant this petition for 'WRIT of CERTIORARI', and EXERCISE its discretionary jurisdiction in this CASE is to SETTLE ONCE AND FOR ALL AN ISSUE THAT HAS BEEN UNCLEAR IN MANY OF THE CIRCUITS CONCERNING WHEN A CIVIL-ACTION IS 'filed or brought' under 28 U.S.C. §1915(g).
- This ISSUE HAS CAUSED A SPLIT AMONGST THE CIRCUITS LIBERAL, AND CONSERVATIVE COURTS, AND THE JUDICIAL POWERS OF THE SUPREME COURT CAN BRING A UNIFORM LAW TO THIS DISPUTE. THIS ISSUE OF WHEN A CIVIL-CASE HAS BEEN 'filed or brought' under 28 U.S.C. §1915(g) CAN HAVE NATION WIDE RAMIFICATIONS BECAUSE OF THE SPLIT THAT PRESENTLY SITS AMONGST THE CIRCUITS OF COURTS THAT HAVE DIFFERENT OPINIONS OF WHEN A CASE HAS BEEN 'filed or brought' under 28 U.S.C. §1915(g).
- THE SUPREME COURT'S RULING VERY WELL COULD ENABLE MANY PEOPLE ACROSS THE COUNTRY WHO ARE IN LIBERAL CIRCUITS, WHO HAVE BEEN UNABLE TO 'file or bring' civil-action under 28 U.S.C. §1915(g) TO COURT BECAUSE THEY MAY HAVE ACCRUED (3) STRIKES DUE TO THE LIBERAL COURT'S OPINION THAT A CIVIL-ACTION IS 'filed or brought' DURING SCREENING OF A CASE; NOT WHEN IN FORMA PAUPERIS HAS BEEN GRANTED.
- THERE ARE MANY PEOPLE WHO COULD BENEFIT FROM THIS RULING SHOULD THE COURT RULE IN FAVOR OF A CIVIL-CASE BEING 'filed or brought' ONLY AFTER IN FORMA PAUPERIS HAS BEEN GRANTED. THERE MAY VERY WELL BE PEOPLE WHO NEED, AND COULD GET RELIEF FOR MEDICAL CONCERNS WHO DO NOT FIT THE CRITERIA FOR THE 'IMMINENT DANGER' CLAUSE, OR OTHERS WHO CAN NOT AFFORD THE COST OF THE REQUIRED FILING-FEE, BUT HAVE ACCRUED (3)

(REASONS FOR GRANTING PETITION) continued; strikes due to the liberal courts views on when a case has been 'filed or bought'. The 3rd Circuit has strayed away from its ~~its~~ sister circuits and its long standing practice of when a civil-action has 'filed or bought' under 28 U.S.C. § 1915(g). This has caused a rift amongst its sister circuits that a long standing conservative court (3rd) has joined the liberal courts in its views and interpretation concerning this issue.

— Therefore, In closing, I ask and petition for the court to grant this 'Writ of CERTIORARI' so that the Supreme Court can settle this dispute that has nation wide ramifications and will finally be the law of the land.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph A. Braun - El

Date: DEC 31, 2019