

19-7286

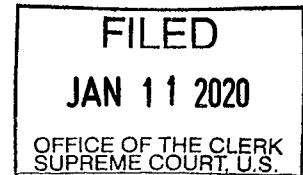
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Leah S. Caldwell, Petitioner

vs.

Doris L. Downs et. al, Respondents



MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner has previously been granted leave to proceed in forma pauperis in the Eastern District of California which continued when the case was transferred to the Northern District of Georgia and the 11th Circuit Court of Appeals.

1/10/2020



(Signature)

10

IN THE
SUPREME COURT OF THE UNITED STATES

Leah S. Caldwell, Petitioner

vs.

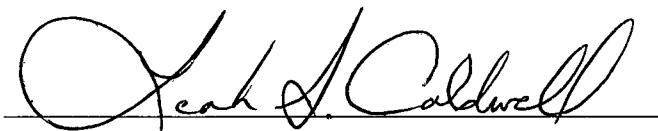
Doris L. Downs et. al, Respondents

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Petitioner has previously been granted leave to proceed in forma pauperis in the Eastern District of California which continued when the case was transferred to the Northern District of Georgia and the 11th Circuit Court of Appeals.

1/10/2020



(Signature)

UNITED STATES DISTRICT COURT

for the

< _____ > DISTRICT OF < _____ >

<Name(s) of plaintiff(s)>, Leah S. Caldwell }

Plaintiff(s) }

v.

<Name(s) of defendant(s)>, Doris L. Downs et. al. }

Defendant(s) }

Case No. < Number >

**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: 1/10/2020

My issues on appeal are: Writ of Certiorari

The original In forma Pauperis was granted in the United States District Court for the Eastern District of California.

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 expected next
---------------	-----------------	----------------------

(Gross monthly pay is before taxes or other deductions.)

3. List your spouse's employment history for the past two years, most recent employer first.

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
N/A			\$

(Gross monthly pay is before taxes or other deductions.)

2. List your employment history for the past two years, most recent employer first. (Gross

* Self-employed/Gig work: Uber, DoorDash, Swiggy

Employer	You	Spouse	You	Spouse	amount during the past month	12 months	month
Self-employed (estimated)	\$ N/A	\$ N/A	\$ 583.33	\$ N/A	\$ 583.33	income from real property (such as rental income)	\$ 0
Interest and dividends	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Interest and dividends	\$ 0
Gifts	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Gifts	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Alimony	\$ 0
Child support	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Child support	\$ 0
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Retirement (such as social security, pensions, annuities, insurance)	\$ 0
Disability (such as social security, insurance payments)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Disability (such as social security, insurance payments)	\$ 0
Unemployment payments	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Unemployment payments	\$ 0
Public-assistance (such as welfare)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Public-assistance (such as welfare)	\$ 0
Other (specify):	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	Other (specify):	\$ 0
Total monthly income:	\$ 700	\$ 583.33	\$ 700	\$ 583.33	\$ 700	Total monthly income:	\$ 700

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

4. How much cash do you and your spouse have? \$ 0.01

N/A

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
Green Dot Bank	Checking	\$ 0.01	\$ N/A
		\$	\$
		\$	\$

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 <u>N/A</u>	Other real estate <u>N/A</u>	Motor vehicle #1 <u>N/A</u>
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2 <u>N/A</u>	Other assets <u>N/A</u>	Other assets <u>N/A</u>
-----------------------------	-------------------------	-------------------------

(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.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$	\$
	\$	\$
	\$	\$
	\$	\$

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

Name (or, if under 18, initials only)	Relationship	Age
N/A		

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, bi weekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 87.90	\$
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)	\$ 76.00	\$
Home maintenance (repairs and upkeep)	\$	\$

Food	\$ 250	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation (not including motor vehicle payments)	\$ 50	\$
Recreation, entertainment, newspapers, magazines, etc.	\$ 15	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify): Mail, Postage, Copies	\$ 100	\$
Total monthly expenses:	\$	\$

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.

I plan to begin working in the next 12 months and expect to receive equitable restitution for tort damages.

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.

I am currently not employed.

12. State the city and state of your legal residence

Sacramento, California

Your daytime phone number: (916) 531-7472

Your age: 56 Your years of schooling: _____

Last four digits of your social-security number: _____

In the Supreme Court of the United States

Leah S. Caldwell, Petitioner

v.

Doris L. Downs et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Leah S. Caldwell, Pro Se
5960 S. Land Park Drive, #350
Sacramento, CA 95822

QUESTIONS PRESENTED

1. Whether the court erred in applying absolute judicial immunity to shield the respondents from accountability for the actions of concealment, stalking, fraudulent concealment, and fraud upon the court.
2. Whether the court of appeals erred by invoking 28 U.S.C. 1915(e)(2)(B)(ii) when the district court in California determined that the petitioner had provided facts sufficient to state a claim that showed respondents' actions injurious to the petitioner and not protected by judicial immunity.
3. Whether the court erred in excluding equitable tolling when there was no statute of limitations for fraud upon the court.
4. Whether the court erred in prolonging the case eighteen months in the Eastern District of California, court-ordering the pretext of an amended complaint then transferring jurisdiction thereby creating two duplicate complaints: one under appeal in the Eastern District of California and a second dismissed in the North District of Georgia.
5. Whether the court erred in transferring jurisdiction *sua sponte* which favored the respondents, disfavored the petitioner and ignored the fact that the critical online sighting of respondent Downs by the petitioner occurred in California and was a primary motivating factor for petitioner's filing.
6. Whether the district judge of the Northern District of Georgia erred in failing to request a waiver or to disclose his financial conflicts of interest with respondent Downs prior to accepting the transferred case.

LIST OF PARTIES AND RELATED CASES

A. Petitioner

Leah S. Caldwell, Pro Se
5960 S. Land Park Drive, #350
Sacramento, CA 95822
(916) 531-7472

B. Respondents

Doris L. Downs
Superior Court of Fulton County
136 Pryor Street, SW
8H/C-848
Atlanta, GA 30303
Fax (404) 612-2547

Wendy L. Shoob
Superior Court of Fulton County
136 Pryor Street, SW
9J/C-956
Atlanta, GA 30303
(404) 612-4570

Caldwell v. Downs et al., No. 2:17-cv-01250-KJM-AC, United States District Court for the Eastern District of California

Caldwell v. Downs et al., No. 1:19-cv-00375-SCJ, United States District Court for the Northern District of Georgia

Caldwell v. Downs et al., No. 19-11751-HH, United States Court of Appeals for the Eleventh Circuit

CERTIFICATE OF INTERESTED PERSONS

Leah S. Caldwell

Allison Claire

Doris L. Downs

Steven C. Jones

Kimberly J. Mueller

Wendy L. Shoob

Leah J. Zammit

David J. Smith

Charles R. Wilson

William H. Pryor Jr.

Britt C. Grant

Michael D. Nicholaus Sr.

Johnie M. Garmon

John E. Trauner

Jorge M. Bergoglio

TABLE OF CONTENTS

Questions Presented.....	Page i
List of Parties and Related Cases.....	Page ii
Certificate of Interested Persons.....	Page iii
Table of Contents.....	Page iv
Table of Appendices.....	Page v
Table of Authorities.....	Page vi-vii
Opinions Below.....	Page 1
Jurisdiction.....	Page 1
Constitutional and Statutory Provisions Involved.....	Page 2
Statement of the Case.....	Page 3-14
Reasons for Granting the Petition.....	Page 14-16
Conclusion.....	Page 17

TABLE OF APPENDICES

Appendix A

Decisions of the United States Court of Appeals for the Eleventh Circuit

Appendix B

Decision of the United States Court of the Northern District of Georgia

Appendix C

Decisions of the United States Court of the Eastern District of California

TABLE OF AUTHORITIES

Cases

<i>Boag v. MacDougall</i> , 454 U.S. 364 (1982).....	Page 11
<i>Bullock v. United States</i> , 763 F.2d 1115, 1121 (10th Cir.1985)	Page 7,8
<i>Caldwell v. Downs et al.</i> , No. 2:17-cv-01250-KJM-AC	
<i>Ibid.</i> , No. 1:19-cv-00375-SCJ.....	Page 11
<i>Cost Mgmt. Servs. v. Washington Natural Gas Co.</i> , 99 F.3d 937, 940	
(9th Cir. Wash. 1996).....	Page 8
<i>Elliot v. Piersol</i> , 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).....	Page 6
<i>Forrester v. White</i> , 484 U.S. 219, 228-29 (1988).....	Page 17
<i>Lavellee v. Listi</i> , 611 F.2d at 1131.....	Page 16
<i>Levine v. United States</i> , 362 U.S. 610, 80 S. Ct 1038 (1960).....	Page 13
<i>Liteky v. U.S.</i> , 114 S Ct. 1147, 1162 (1994).....	Page 6
<i>Mireles v. Waco</i> 502 US 9, 116 L Ed 2d 9, 14, 112 S Ct 286 (US 1991).....	Page 6
<i>Page v. Grady</i> , 788 F. Supp. 1207 (N.D. Ga 1992).....	Page 8
<i>Smith v. Nixon</i> , 606 F.2d 1183, 1190 (D.C. Cir. 1979).....	Page 14
<i>Stephens v. Herring</i> , 827 F. Supp. 359 (E.D. Va. 1993).....	Page 8
<i>Supreme Court of Virginia v. Consumers Union of United States, Inc.</i> ,	
446 U.S. 719, 731 (1980).....	Page 17
<i>United States v. Kubrick</i> , 444 U.S. 111, 100 S. Ct. 352, 62 L.Ed.2d 259 (1979).....	Page 16
<i>Wightman v. Jones</i> , 809 F. Supp. 474 (N.D. Tex. 1992).....	Page 8

Constitutional Provisions

US Constitution, 5th Amendment	Page 3
US Constitution, 14th Amendment	Page 3

Statutes

Civil Rights Act of 1866.....	Page 3
28 U.S.C. 406(b).....	Page 10
28 U.S.C. 455.....	Page 15
28 U.S.C. 636(c)(2).....	Page 10
28 U.S.C. 1446.....	Page 9
28 U.S.C. 1915(d).....	Page 11
28 U.S.C. 1915(e)(2)(B)(ii).....	Page 3,15
42 U.S.C. 1943.....	Page 3
453 U.S. 912 (1981).....	Page 11
Fed R. Civ. P. 72.....	Page 9
Fed. Civ 2:3389.....	Page 9
Fed. Civ. 2:3401.....	Page 9

Local Rules

302(21)(c).....	Page 8
302(d).....	Page 9

Citations of Opinion

Supreme Court 1994, Liteky v. U.S., Disqualification of Judges.....	Page 6
Third Circuit Opinion: Fraud Upon the Court.....	Page 7

Other

Black's Law Dictionary, 4 th Edition.....	Page
--	------

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

In the name of God, I, Leah S. Caldwell, Petitioner respectfully prays that a writ of certiorari issue to review with judgement below.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

The Opinion of the United States District Court for the Northern District of Georgia appears at Appendix B to the petition and is unpublished.

The Opinion of the United States Court of Appeals for the Eastern District Court appears at Appendix C and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was 10/15/2019.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. 12454(1)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

US Constitution, 5th Amendment	Page 3
US Constitution, 14th Amendment	Page 3
<u>Statutes</u>	
<u>Statutes</u>	
Civil Rights Act of 1866.....	Page 3
28 U.S.C. 406(b).....	Page 10
28 U.S.C. 455.....	Page 15
28 U.S.C. 636(c)(2).....	Page 10
28 U.S.C. 1446.....	Page 9
28 U.S.C. 1915(d).....	Page 11
28 U.S.C. 1915(e)(2)(B)(ii).....	Page 3, 15
42 U.S.C. 1943.....	Page 3
453 U.S. 912 (1981).....	Page 11
Fed R. Civ. P. 72.....	Page 9
Fed. Civ 2:3389.....	Page 9
Fed. Civ. 2:3401.....	Page 9

STATEMENT OF THE CASE

In the name of God, I, Leah S. Caldwell, the Petitioner, a fit and proper person claim the full intent and title of the Civil Rights Act of 1866.

Under 42 U.S.C. § 1983, the “deprivation of … rights, privileges, … (and) immunities secured by the Constitution and [federal laws]” were violated along with petitioner’s civil rights by the respondents as described in the Civil Rights Act of 1866 and the Fifth and Fourteenth Amendments.

The court of appeals erred by invoking 28 U.S.C. 1915(e)(2)(B)(ii) when the order from the district court in California determined that the petitioner *in forma pauperis* had provided facts stating a claim that showed “certain actions” of respondent Doris L. Downs which included concealment, stalking, fraudulent concealment and fraud upon the court “may have exceeded the bounds of judicial immunity.”

The petitioner further claims that Downs’ actions injured the petitioner through unlawful arrest and false imprisonment. The custody-switch orders finalized by respondent Wendy L. Shoob caused injury by denying the petitioner her God-given right to contact her children in violation of 42 U.S. Code 1983.

Statement of Facts

On June 17, 2005, the petitioner and opposing counsel Leah J. Zammit were scheduled to appear before Shoob in the Fulton County Court concerning a civil matter.

Early that Friday morning, petitioner’s son became ill and she drove him to the hospital

for emergency care along with petitioner's daughter.

Petitioner called the court that morning before the case began to inform the clerk that due to a medical emergency, the petitioner would not be present in the hearing of this civil case. The petitioner was not informed by the court of a change in judicial venue from Shoob to Downs.

The petitioner had been in the physical presence of Shoob in three previous court appearances in this civil matter. The petitioner had also been in court with Zammit during the final hearing for the divorce decree. The petitioner had not seen, heard, or been in the physical presence of Downs to know her face, build, stature or gait.

While at the hospital, petitioner received a call from the courthouse and specifically the judge's chambers. Petitioner understood the judge to be Shoob and was not informed of a change in venue to Downs. Petitioner was then asked her whereabouts and informed the caller of her location at the hospital for a medical emergency concerning her son. The caller abruptly disconnected.

In the latter part of the morning after 10 am, the hospital released the petitioner's son and the family drove back towards the home. Petitioner stopped briefly near the local library and noticed the ex-husband's vehicle pass in front.

Petitioner drove away from the library and then observed a white, Mercedes SUV tailing directly behind her vehicle. After making several turns, the SUV continued to follow the petitioner's car driving at times within two or three feet of the vehicle.

Petitioner observed the driver of the SUV through the left, driver's side and rearview mirrors. When the SUV again came dangerously close to her car near the

county jail, the petitioner was able to identify one of the individuals stalking her.

The driver of the SUV, a brunette, was Zammit. The passenger in the SUV, a blond, began frantically waving to a police officer adjacent to the jail. Petitioner did not know the identity of the blond passenger seated next to Zammit.

Petitioner drove onto a main road and several Atlanta police cars descended upon her vehicle. Petitioner pulled into a retail parking area, stopped the car and was ordered out of the vehicle and put into loose-fitting cuffs by the officers. Her Miranda rights were not read nor was the petitioner told why she was under arrest. At no time did the blond woman approach the petitioner.

Once the children were removed from the vehicle, the same blond passenger in Zammit's car exited the SUV displaying similarly aggressive gestures as toward the cop near the jail and began ordering the children to be put into their father's Jeep Cherokee.

This unknown woman stood within a foot or two of the Cherokee in pants and street clothes. At no point did petitioner recognize the identity of this woman. Neither did this woman identify herself to the petitioner nor the police.

The petitioner, in shock from the arrest, was brought to the Fulton County jail, forced to sign a partially, hand-written switch of custody order and then held in the jail without charge for a week. Shoob kept the petitioner in prison four days and then ordered her to court. The petitioner, brought shackled from jail, waited in a holding cell under the courthouse for eleven hours until the court closed at 5:30 pm. The petitioner was then brought before Shoob who chastised the petitioner, ordered a full custody switch to the father and then ordered a permanent

restraining order placed between the petitioner and her children until they reached 18 years of age.

After release from jail, which took an additional three days, the petitioner, an educator, was traumatized by this violent miscarriage of justice; an extraordinary circumstance in law perpetrated by Shoob and Downs, officers of the court. Petitioner did not know Downs in person and was therefore not aware of what this respondent had perpetrated in complete absence of all jurisdiction nor of Shoob's complicity in this violation. *Mireles v. Waco* 502 US 9, 116 L Ed 2d 9, 14, 112 S Ct 286 (US 1991).

The court erred in applying absolute judicial immunity to shield the respondents from accountability for concealment, fraudulent concealment, stalking, and fraud upon the court. Given the prejudicial treatment towards the petitioner by the respondents, the U.S. Supreme Court held "[d]isqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S Ct. 1147, 1162 (1994)

Further, the Supreme Court held that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) (A judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.), *Mireles Ibid.*

Concealment is a withholding of something which one knows and which one, in duty, is bound to reveal. Fraudulent concealment is the hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. (Black's Law 4th Edition).

Shoob and Downs were complicit in this fraud upon the court for Shoob transferred petitioner's venue of a civil matter to Downs. Shoobs' and Downs' transferred venue was a material fact. Neither Shoob nor Downs informed the petitioner of the transfer in writing prior to the court date. Both Shoob and Downs were legally, morally and duty-bound to reveal their identities and inform the petitioner of their change of venue in writing prior to the court date; neither did. Petitioner was not present in court due to her child's medical emergency and was not aware of the change in judges. The judges failed in their judicial function. *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)

The caller from Shoob's chambers did not inform the petitioner of the change in judges. Petitioner had never met, seen or known the physical identity of respondent Downs and did not know her facially. Petitioner did not recognize the identity of the woman in plain clothes who accompanied Zammit or why she and her children were being stalked by this couple. Respondent Downs intentionally defrauded the court by concealing her identity from the petitioner as an officer of the court while acting as a vigilante and in doing so deceived the petitioner and the court. Respondent's fraud was directed at the court itself because at the time of the arrest, Downs was the chief judge of Fulton County Superior Court. Petitioner was arrested, but never informed at the scene in person or in writing as to why. The petitioner was never charged with a crime. The impartial function of the court was directly corrupted. *Bullock Ibid.*

The Third Circuit Court of Appeals stated that "[i]n order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an

intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court”

Petitioner was traumatized when first presented custody switch orders in the Fulton County jail where her signature was demanded by the deputy. Petitioner did not associate the judge’s written order with the plain clothes, unknown woman at the arrest since the judge of record was Shoob. The final order to switch custody signed and issued by Shoob was based in Downs’ concealment, stalking, unlawful arrest and partially hand-written order. Judicial immunity is not designed to insulate the judiciary from all aspects of accountability. As the chief judge, Downs had an in-depth understanding and responsibility to the court and therefore her deception was directed against the judicial organism that was Fulton County Court. *Page v. Grady*, 788 F. Supp. 1207 (N.D. Ga 1992); *Wightman v. Jones*, 809 F. Supp. 474 (N.D. Tex. 1992); *Stephens v. Herring*, 827 F. Supp. 359 (E.D. Va. 1993), *Bullock Ibid.*

In summary, Downs concealed her identity from the petitioner, rode in the opposing counsel’s car, followed the petitioner and her children until the petitioner’s vehicle was surrounded by Fulton County officers in Atlanta, Georgia. Downs, unknown to the plaintiff, then directed an in-person arrest. *Cost Mgmt. Servs. v. Washington Natural Gas Co.*, 99 F.3d 937, 940 (9th Cir. Wash. 1996).

Petitioner lost all hope of receiving any justice in this federally-funded, unregulated state- and county-run, family law court. Petitioner’s children were denied contact and alienated from their mother as a result of the trauma inflicted upon petitioner’s family by the court. Petitioner left Georgia and worked to rebuild her life.

In 2017, petitioner viewed an online discussion and recognized the face, gait and build of the individual in the video identified as Judge Doris L. Downs. Seeing her person for the now

second time and watching her moving image and gestures, the petitioner recognized Downs as the aggressive, blond passenger in Zammit's SUV that Friday, June 17, 2005. Petitioner viewed this video in California.

When petitioner knew the identity of Downs, that respondent had concealed, stalked and directed the in-person arrest of the petitioner constituting a fraud upon the court not protected by federal law, damages were raised to \$12,000,000. Petitioner holds Downs and Shoob accountable for violating the law, their oaths of office and damaging the God-given, civil rights of a mother to raise her children.

Petitioner, a resident of California in 2017, therefore filed a federal lawsuit against the respondents on 6/16/2017. Diversity existed because the respondents lived in Georgia.

Removal or transference of the complaint demanded effect by 6/15/2018 as per 28 U.S.C. 1446, Fed Civ 2:3401 and no such order was submitted by the respondents. The magistrate issued findings and recommendations to dismiss the case 7/25/2017. Petitioner filed her objections on 8/14/2017.

On 8/22/2018, District Judge Kimberly J. Mueller, in light of petitioner's objections, declined to adopt magistrate's findings and ordered "proceedings to develop the records as necessary for consideration of whether the information contained in plaintiff's objections justifies granting further leave to amend, or ... require[s] supplementation."

The magistrate therefore ordered the petitioner on 12/14/2018 to file an amended complaint. Petitioner filed the amended complaint on 1/11/2019 and in doing so did not trigger or re-trigger the right to remove per Fed. Civ. 2:3389.

Yet on 1/17/2019, Magistrate Claire, in violation of Fed R. Civ. P. 72, Local Rule 302(d), transferred the Eastern District of California complaint *sua sponte* to the Northern District Court of Georgia despite an appeal to the district judge to reinstate jurisdiction.

The court erred in prolonging the case eighteen months in the Eastern District of California, court-ordering the pretext of an amended complaint only to switch jurisdiction to Georgia.

On 2/8/2019, petitioner filed an appeal requesting Mueller remove the magistrate per 28 U.S.C. 636(c)(2) and strike the transfer. On 2/14/2019, petitioner filed another motion requesting Mueller keep the complaint in the Eastern District court. On 8/22/2018, Mueller had applied Local Rule 302(d), Fed R. Civ. P 72 to decline magistrate's findings of dismissal and refer-back for further consideration. However, in 2019, the district judge offered no response to the appeal or the motion. Despite the IFP, petitioner's objections as per 28 U.S.C. 406(b), Magistrate Claire transferred the jurisdiction from California to Georgia without a motion from the petitioner, the respondents or an order from Mueller. Fed R. Civ. P. 72, Local Rule 302(c)(21).

The court erred in transferring jurisdiction which favored the respondents, disfavored the petitioner and ignored the critical online sighting of respondent Downs in California; a primary motivation for petitioner's filing. In the magistrate's 1/17/2019 order, she stated "this claim arose in Atlanta, Georgia....[and a]ll defendants are from Georgia. Therefore, plaintiff's claim should have been filed in...the Northern District of Georgia." However, the petitioner discovered the physical and facial identity of "Judge Doris L. Downs" from an online presentation of Fulton County Court Judges viewed by the petitioner in California in 2017. As such, the doctrine of fraudulent concealment [including concealment and fraud upon the court] tolls with the statute of limitations in that there is none. Even if a statute of

limitations did apply, which it does not, the period would begin after the petitioner discovered the respondent's identity in California where it was filed. *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C. Cir. 1979), cert. denied, 453 U.S. 912 (1981) (In view of the secrecy surrounding the wiretapping, the court held that Smith could avail himself of the fraudulent concealment doctrine. *Id* at 191 & n.44.)

The court therefore erred in creating two duplicate complaints: one currently under appeal in the Eastern District of California while the second dismissed in the Northern District of Georgia. *Caldwell v. Downs et al.*, No. 2:17-cv-01250-KJM-AC remains in appeal with Mueller and has since February of 2019 while *Caldwell v. Downs et al.*, No. 1:19-cv-00375-SCJ was dismissed 4/5/2019 with a mandate from the Eleventh Circuit Court of Appeals 11/14/2019. Unlike concurrent jurisdiction between and federal and state court, this jurisdictional gridlock resulted from the improper transfer of a pro se, IFP case *sua sponte* by the magistrate to an *amicus reus* in Georgia.

Circuit Judges Britt C. Grant, William H. Pryor, Jr. and Charles R. Wilson adjudicated plaintiff's IFP claim *per curiam* stating, "We need not and do not consider Caldwell's transfer of venue claim." In doing so, these judges have also overstepped the petitioner's jurisdiction still pending in the Eastern District of California. *Boag v. MacDougall*, 454 U.S. 364 (1982) (*per curiam*) (reversing dismissal of an *informa pauperis* petition when dismissal was based on an erroneous legal conclusion and not exercise of the "broad discretion" granted by § 1915(d))

The district judge of the Northern District of Georgia erred by failing to request a waiver or disclosure of his financial conflicts of interest with respondent Downs prior to accepting the transferred case. District Judge Steven C. Jones of the Northern District of Georgia accepted the transferred case while failing to issue a waiver or disclose his financial

conflicts of interest with respondent Downs. Jones and Downs share financial conflicts of interest within the state Child Support Recovery Office in Georgia having both worked there upon graduation. Jones dismissed the case in full color of law when his financial relationship with Downs and therefore his “impartiality might reasonably be questioned.” 28 U.S.C. 455. Jones also overstepped the petitioner’s jurisdiction and the authority of Mueller in the Eastern District of California whose active motions to remove the magistrate await adjudication.

Petitioner appealed the dismissal to the United States Court of Appeals for the Eleventh Circuit on 5/3/2019. The clerk’s office dismissed the claim, but the circuit court correctly GRANTED petitioner’s “Motion to Set Aside Clerk’s Entry of Dismissal” and REINSTATED her appeal on 8/16/2019. However, the Eleventh circuit Judgement failed to address respondent’s principal complaint that the conflict of interest between an adjudicating district judge and the appellee Doris L. Downs warranted proper adjudication.

Without addressing this conflict of interest, the Eleventh Circuit Court mandated a judgement affirming Jones’ dismissal for failure to state a claim under 28 U.S.C. 1915(e)(2)(B)(ii) and then dismissed the motion to transfer moot.

The court erred in applying the statute of limitations when none existed for fraud upon the court. The circuit court determined *sua sponte* that petitioner should have “reasonably” known the identity of the “unknown person” stalking her and that “[i]t is clear from her complaint that in 2005 [petitioner] knew …Judge Downs’[] name was on her arrest warrant and hearing paperwork. This [knowledge] was sufficient information to file suit within the limitations period.” However, petitioners knowledge was not sufficient to file a suit for stalking, concealment, and fraud because the petitioner did not know the identity of the “unknown woman.”

Downs had never adjudicated a case before the petitioner. Downs held the legal authority, the ethical and moral responsibility to identify herself to the petitioner, but she did not. At the arrest site and wearing street clothes with no robe or symbol of authority, Downs directed petitioner's arrest, but did not identify herself to the petitioner neither speaking nor presenting an arrest warrant or hearing paperwork. The petitioner did not understand why she was arrested for taking her child to the hospital for a medical emergency having informed the court and possessing the discharge papers from the hospital as proof. Respondents through their actions, transfers, and concealment appeared unjust. "Justice must satisfy the appearance of justice," *Levine v. United States*, 362 U.S. 610, 80 S. Ct 1038 (1960).

The court further stated that "the facts supporting [petitioner's] cause of action were apparent or should have been apparent 'to a person with a reasonably prudent regard for his rights.'" However, as detailed above, petitioner's cause of action was not apparent. Petitioner's trauma from the "extraordinary circumstances" of being followed, arrested without charge, jailed for a week, and separated from her children for years by judicial orders effected petitioner's "reasonably prudent regard for her rights." Downs' fraudulent concealment against the petitioner and the court lay "beyond [petitioner's] control and [was] unavoidable" even with diligence.

The circuit court also failed to consider the "extraordinary circumstance" of the petitioner viewing Downs in a publicly-available, online presentation hosted by the Fulton County Court as a "credible reason why...claims would have tolled during that 12-year period." until that time in 2017. Section 1983 states that action will not accrue until the plaintiff is aware ... [of] who has inflicted the injury. *Lavellee v. Listi*, 611 F.2d at 1131 (quoting *United States v. Kubrick*, 444

U.S. 111, 100 S. Ct. 352, 62 L.Ed.2d 259 (1979)). However, there is no statute of limitations for respondents' fraud upon the court

In reviewing the case based upon failure to state a claim, the court incorrectly interpreted the parameters of respondents' absolute judicial immunity because Downs and Shoob are culpable for the crimes of concealment, stalking, fraudulent concealment, ordering an unlawful custody-switch and fraud upon the court.

REASONS FOR GRANTING THE PETITION

Petitioner prays for the Supreme Court to address and curtail the improper use of "absolute judicial immunity" and failure to state a claim per 28 U.S.C 1915(e)(2)(B)(ii) so that *informa pauperis* complaints are correctly and equitably adjudicated.

Judge Mueller clearly stated in August 2018 that "plaintiff appears to provide facts indicating certain of Judge Doris [D]owns'[] actions may have exceeded the bounds of judicial immunity. See Objections at 4 (declaring, under penalty of perjury, that Judge Downs "entered the private vehicle of opposing counsel," "followed directly behind the plaintiff's vehicle (stalking) for several miles ...cornering the plaintiff and her children and the streets" and "ordered the children into the plaintiff's ex-husband's car in a commercial parking lot."). Cf. *Supreme Court of Virginia v. Consumers Union of United States*, Inc., 446 U.S. 719, 731 (1980) (judges "promulgating" code of conduct for attorneys do not get judicial immunity because "promulgating rules" is a legislative function; but they do get legislative immunity); *Forrester v. White*, 484 U.S. 219, 228-29 (1988) (judges "enforcing" the Bar Code would be treated like prosecutors for immunity purposes.)

Judge Mueller declined to adopt the magistrate's findings of absolute judicial immunity and failure to state a claim because Mueller found petitioner's "verified objections raise new information that may change the magistrate's recommendation." Claire therefore complied with Mueller's recommendation to amend, then removed the jurisdiction from California to Georgia in January 2018. By transferring petitioner's complaint to the Northern District of Georgia, Jones later joined by Grant, Wilson and Pryor bypassed Mueller's order. The eleventh circuit's judgment, Jones' order and the magistrate's initial 2017 all dismiss the case on the grounds of "absolute judicial immunity" and "failure to state a claim" without discovery or equitable consideration.

The pro se petitioner's *informa pauperis* case must be treated equitably for clearly a claim has been successfully stated. Instead, the complaint has only been duplicated discharging the respondents' accountability under the cover of absolute judicial immunity.

Judges in violation of 1983 are not protected by absolute judicial immunity nor are any orders issued as a result of this violation legal or valid. An act done in complete absence of all jurisdiction cannot be a judicial act. *Piper v. Pearson*, id., 2 Gray 120. "It is no more than the act of a private citizen, pretending to have judicial power which does not exist at all. In such circumstances, to grant absolute judicial immunity is contrary to the public policy expectation that there shall be a Rule of Law." Respondents are liable to the petitioner for injury and damages created by their actions.

To find immunity denigrates the respect of the public for the judiciary which is dependent upon judges making decisions based on the law and the facts, rather than personal, corrupt motives.

Currently, there is a national epidemic of family court fraud, waste and abuse and it's only getting worse.

Federal funds (i.e. VAWA) unintentionally facilitate this misuse providing states and counties with funding while not requiring federal oversight with the cases that come before superior courts. Judges receive state, county and federal funds spread around to grow the family court business culture while destroying the culture and business of the family and its cohesiveness. The Supreme Court can and must make history by addressing this broken and abused family law mechanism within the courts. Clearly judges across jurisdictions have differing opinions on this matter of national urgency.

I raised and taught my children for the first near-decade of their lives only to have them taken from me by two judges, both mothers, who as surely as they raised their children knew firsthand what they did to me was wrong in the sight of God.

I have not seen my children in nearly 15 years because of Wendy Shoob's family court orders and Doris Downs' unlawful arrest back in 2005. It wasn't fair then, it's not fair now.

Petitioner prays the Supreme Court will review the misuse of 1915(e)(2)(B)(ii) against pro se and IFP petitioners for "failure to state a claim" and "absolute judicial immunity" to cloak a much larger issue of protectionism and lack of judicial accountability.

CONCLUSION

Petitioner prays that her children will one day understand that their mother battled to restore her family and their dignity, sought vindication to clear her good name, receive damages to repair her family's injury and that she won the war in the name of God.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Leah S. Caldwell, Pro Se

5960 S. Land Park Drive, #350
Sacramento, CA 95822