No. 19-8289

IN THE

SUPREME COURT OF THE UNITED STATES

JOSÉ YEYILLE —PETITIONER

vs.

CECILIA ALTONAGA, WALTER HARVEY, AND ALBERTO CARVALHO—RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

José Yeyille

5505 SW 135th Court

Miami, Florida 33175

786-201-6142

QUESTIONS PRESENTED

1. Whether the district court appropriately resolved genuine issues of disputed facts; correctly applied legal conclusions; and provided any statement explaining its dismissal of the Complaint that would facilitate any remotely ""intelligent appellate review"""". ***Denton v. Hernandez*, 504 U.S. 25, 34 (1992)**.

2. Whether the summary disposition by the Eleventh Circuit Court of Appeal of Petitioner's Permission to Appeal In Forma Pauperis and Fed. R. App. P. 24(a) (5) is justified under ***Coppedge v. United States*, 369 U.S. 438 (1962)**, ***Cruz v. Hauck*, 404 U.S. 59 (1971)**, and ***Neitzke v. Williams*, 490 U.S. 319 (1989)**.

3. Whether district court judge Beth Bloom violated Petitioner's Equal Protection rights protected by the Fifth Amendment to the Constitution of the United States.

4. Whether district court judge Beth Bloom violated Petitioner's right to a Jury Trial protected by the Seventh Amendment to the Constitution of the United States.

LIST OF PARTIES

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

RELATED CASES

José Yeyille v. Cecilia M. Altonaga, Walter Harvey, Alberto Carvalho,
19-14835 (2020) (Motion for Leave to Proceed on Appeal
in Forma Pauperis DENIED without opinion)

José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho
19-cv-24869[Document 10](2019)
(Order Denying Leave to Proceed In Forma Pauperis on Appeal)

José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho
19-cv-24869[Document 7](2019)
Order on Motion Pursuant to Fed.R.Civ.P.(60)(b)(6)

José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho
19-cv-24869 [Document 4](2019)
Order Dismissing Case and Denying as moot his Motion for Leave to Proceed
In Forma Pauperis.

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is [X] unpublished. [This Case, February 7, 2020]

The opinion of the United States court of appeals appears at Appendix **D** to the petition and is reported at 654 Appx. 394 (11th Cir. 2016) [First Appeal]

The opinion of the United States district court appears at Appendix **B** to the petition and is [X] unpublished. [December 16, 2019]

The opinion of the United States district court appears at Appendix **C** to the petition and is [X] unpublished. [December 2, 2019]

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 26th, 2020.

[X] No petition for rehearing was timely filed.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V.

United States Constitution, Amendment VII.

STATEMENT OF THE CASE

In November 25th, 2019 Petitioner brought a lawsuit in the United States District Court, Southern District of Florida, seeking compensatory damages, treble civil damages, restitution, equitable remedies, and court costs against Cecilia Altonaga, Walter Harvey, and Alberto Carvalho, in their ***individual capacities*** under 18 U.S.C §1964(c) for violations of 18 U.S.C. §1962(c)[1] and 18 U.S.C §1964(c) for violations of 18 U.S.C. §1962(d)[2]; and ***Bivens***[3] claims against United States District Court judge Cecilia Altonaga in her ***individual capacity***, and in her ***official***

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[1] **First Claim**: Cecilia Altonaga (Counts 1-33). Walter Harvey (Counts 34-66). Alberto Carvalho (Counts 67-99). (Bribery) **18 U.S.C. §201 *et seq.*** (Obstruction of Justice) **18 U.S.C. §1503** (Money Laundering) **18 U.S.C. §1956 *et seq.*** (Engaging in Monetary Transactions derived from Bribery, Obstruction of Justice, Money Laundering, and Conspiracy to Commit *svpra.*) **18 U.S.C. §1957 *et seq.*** (Conspiracy to Commit Bribery, Obstruction of Justice, Money Laundering, and Engage in Monetary Transactions Derived from *svpra.*) **18 U.S.C. §1956(h).**

[2] **Second Claim**

[3] **Third Claim**: Cecilia Altonaga (Counts 100-102). ***Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).**

capacity for violating Plaintiff's civil rights of Due Process and Equal Protection protected by the Fifth Amendment, and his right to jury trial protected by the Seventh Amendment to the Constitution of the United States. Jury Trial was duly demanded.

In December 8, 2014[4], Plaintiff brought a lawsuit to recover **$46,431 of federal funds in unpaid salary**, and for compensatory and treble damages against The School Board of Miami-Dade County, Florida, ALBERTO CARVALHO, Lisa Robertson, Armandina Acosta-Leon, Asuncion-Valdes, and Egna Rivas in their individual and official capacities for their violation of Plaintiff's civil rights—discrimination, retaliation, and harassment—and extortion, forced labor, and human trafficking. Defendants were represented by The School Board of Miami-Dade County, Florida's attorney, WALTER HARVEY. (COMPLAINT, Facts, ¶8].

At all relevant times George Mencio Jr. was CECILIA ALTONAGA's husband. At all relevant times George Mencio Jr. was employed by the law firm of **Holland & Knight, LLP**. (COMPLAINT, Facts, ¶9].

CECILIA ALTONAGA offered to WALTER HARVEY and ALBERTO

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[4] The Complaint erroneously states the date as December 4, 2014.

CARVALHO to dismiss Plaintiff's lawsuit with prejudice in exchange for their promise to hire, and to give Plaintiff's money to, the law firm of **Holland & Knight, LLP** to represent The School Board of Miami-Dade County, Florida. Aware that CECILIA ALTONAGA's husband is employed by the law firm of **Holland & Knight, LLP**, WALTER HARVEY and ALBERTO CARVALHO accepted her offer and promised her to hire the law firm of **Holland & Knight, LLP** immediately; but CECILIA ALTONAGA advised them that as a precaution, and for the sake of appearances, that they should wait until after she dismissed Plaintiff's lawsuit with prejudice. WALTER HARVEY and ALBERTO CARVALHO agreed with CECILIA ALTONAGA's concerns and promised her to hire, and to give Plaintiff's money to, the law firm of **Holland & Knight, LLP** as soon as possible after she dismissed Plaintiff's lawsuit with prejudice. (COMPLAINT, Facts, ¶10).

In June 15th, 2015[5], judge CECILIA ALTONAGA dismissed Plaintiff's lawsuit with prejudice. (*Yeyille v. Miami-Dade County Public Schools, et al.*, U.S. District Court Case No. 14-24624-CIV ALTONAGA/O'Sullivan (S.D. Fla. 2015). (COMPLAINT, Facts, ¶11).

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[5] The Complaint erroneously states the date as May 15, 2014.

In July, 2015, WALTER HARVEY, the School Board Attorney, "***requested*** proposals from qualified law firms to provide...legal services" for The School Board of Miami-Dade County, Florida. **(G-5: Authorization for the School Board Attorney to Retain Public Private Partnership Legal Counsel) ("*Emphasis*")**. (COMPLAINT, Facts, ¶12).

WALTER HARVEY and Superintendent ALBERTO CARVALHO "**agreed** that the most qualified law firms were Greenberg Traurig, PA, and **Holland & Knight, LLP**." (Ibid) (**Emphasis**). (COMPLAINT, Facts, ¶13).

In November 6th, 2015 HARVEY and CARVALHO made a request to The School Board "to retain Greenberg Traurig and Holland & Knight to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $425 per hour to partners and associates." (Ibid). (COMPLAINT, Facts, ¶14).

In November 16th, 2015 CARVALHO informed the Honorable Chair and Members of The School Board of Miami-Dade County, Florida that: "At the request of Mr. Walter J. Harvey, School Board Attorney, the attached **Agenda Item G-5** is being withdrawn from the November 18, 2015 Agenda for further consideration." **(WITHDRAWN—11-16-15 G-5)**. (COMPLAINT, Facts, ¶15).

In November 20th, 2015 HARVEY and CARVALHO "***recommended*** the

selection of the law firm **Holland & Knight, LL.P.** The proposed compensation is a blended rate of $394 per hour for both partners and associates. Another very qualified firm, Greenberg Traurig, already has an existing agreement with the Board at the same rates. Authorization is therefore **requested to retain Holland & Knight, LL.P." (G-2 Revised: Authorization for the School Board Attorney to Retain Public Private Partnership Legal Counsel) (Emphasis).** (COMPLAINT, Facts, ¶16).

In December 2nd, 2015 the School Board authorized HARVEY "to retain **Holland & Knight LL.P** to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $394 per hour for partners and associates." **(Excerpts from Unofficial Minutes of December 2, 2015 School Board Meeting).** (COMPLAINT, Facts, ¶17).

WALTER HARVEY retained **Holland & Knight LL.P** to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $394 per hour for partners and associates. **Since then** HARVEY and CARVALHO have continuously compensated **Holland & Knight LLP** in an amount **higher than $10,000** and threaten to continue to do so. (COMPLAINT, Facts, ¶18).

In November 26, 2019, the district court dismissed Petitioner's Complaint and denied as moot his Motion for Leave to Proceed *In Forma Pauperis* **[APPENDIX D]** "for all three reasons enumerated under section [28 U.S.C.] 1915(e)(2)(B)." (Order, page 3).

1. According to the court, the Complaint is **factually frivolous** under **28 U.S.C. §1915(e)(2)(B)(i)** because

> Plaintiff... alleges that Judge Altonaga offered to dismiss Plaintiff's previous lawsuit with prejudice in exchange for their promise to hire, and to give his money to, Holland & Knight to represent the Miami-Dade County School Board because her husband is an attorney at Holland & Knight. Id. at 6 ¶10." In essence, Plaintiff takes issue with Judge Altonaga's ultimate conclusion that his previous claims be dismissed. Nevertheless, Plaintiff appealed Judge Altonaga's dismissal of his previous case to the Eleventh Circuit, which affirmed the dismissal with prejudice." (Order, page 4).

"In addition," the court considered these **facts** in the Complaint (Complaint, Facts, ¶10) ""fantastic or delusional scenarios, claims with which federal judges are all too familiar"" citing ***Denton v. Hernandez*, 504 U.S. 25, 32 (1992)**, and ***compared*** these **facts** with the "factually frivolous where Plaintiff alleged that senior government officials caused the September 11, 2001 attacks" wielding ***Gallop v. Cheney*, 642 F.3d 364 (2d Cir. 2011)** (Order, pages 4-5).

2. According to the court, the Complaint is **legally frivolous** under **28 U.S.C. §1915(e)(2)(B)(i)** because

> In addition, the Complaints ***legal theories***, as presented here, are indisputably meritless, as Plaintiff's claims amount to nothing more than dissatisfaction with the outcome of his previous case..... ***Neitzke v. Williams*, 490 U.S. 319, 328 (1989)**(a complaint is ***legally frivolous*** when it contains "claims of infringement of a legal interest which clearly does not exist." (Order, page 4)(***emphasis***).

3. According to the court, the Complaint **fails to state a claim on which relief may be granted** **(Fed. R. Civ. P. 12(b)(6))** under **28 U.S.C. §1915(e)(2)(B)(ii)** because its **facts** are "frivolous" (Order, pages 4-5)(*svpra.*), and does not meet the requirements of ***Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)** regarding **Fed. R. Civ. P. 8(a)(2)** that "a complaint must contain sufficient matter, accepted as true, to "'state a claim to relief that is plausible on its face'" (quoting ***Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570)(2007)**(*Ibid.*).

4. According to the court, the Complaint is **legally frivolous** under **28 U.S.C. §1915(e)(2)(B)(iii)** because it seeks monetary relief against a defendant who is immune from such relief. "Judge Altonaga is immune from civil liability for damages taken in her judicial capacity...." and ""A judge will not be deprived of immunity because the action[s]he took was in error, was done maliciously, or was in excess of [her] authority."" Stump v. Sparkman, 435 U.S. 349, 356-357 (1978)."" (Order, page 4).

In November 29, 2019 Petitioner **moved** the district court to vacate its judgment in *Yeyille v. Altonaga, et al.*, Case No.19-ev-24869-BLOOM/Louis,

Document 4, FLSD Docket 11/26/2019 pursuant to **FED. R. CIV. P (60)(b)(6)** dismissing his Complaint [ECF No. [1], and denying Plaintiff's Motion to Proceed in•forma•pavperis [ECF No. [3] on the grounds that it violated Petitioner's **Equal Protection** rights protected by the **Fifth Amendment**, and his right to a **Jury Trial** protected by the **Seventh Amendment** to the Constitution of the United States. In addition, Petitioner **petitioned** the court, and the United States Eleventh Circuit Court of Appeals to exercise their supervisory power over its judgment to allow Petitioner to entertain an independent action to relieve Petitioner from this Court's onerous and arbitrary judgment pursuant to **Fed. R. Civ. P. (60)(d)(1).** (Hereinafter, **Motion/Petition**).

In December 2, 2019 the district court—without addressing either Petitioner's **constitutional challenges** or grounds for an independent action—denied Petioner's Motion/Petition because "the Motion fails to demonstrate extraordinary circumstances necessary to justify relief under Rule 60(b)(6), or entitlement to relief under Rule (60(d)(1)."(Order, 12/02/2019)**[APPENDIX C]**.

In December 5, 2019, Petitioner timely submitted a Notice of Appeal of the district court's Orders [APPENDIX D and C].

In December 5, 2019 the district court denied Petitioner's Motion for Leave to Proceed *in Forma Pauperis* on Appeal. [APPENDIX B]. "A claim is frivolous

""where it lacks an arguable basis either in law or in fact."" *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)."[6]

In December 6, 2019 Petitioner submitted a Fed. R. App. P. Rule 24(a)(5) Motion to Proceed in Forma Pauperis with Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis to the United States Eleventh Circuit Court of Appeals. In **my issues on appeal**, Petitioner repeated his contentions in his Fed. R. Civ. P. 60(b)(6) Motion of November 29, 2019 (*svpra.*)[7], and argued that the district court's certificate denying Plaintiff's leave to proceed in forma pauperis is arbitrary and abusive, and definitively not conclusive[8] and—like the

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[6] "As the Court's order of dismissal makes clear, Plaintiff's complaint is **frivolous**, **fails to state a claim**, and **the legal theories presented are meritless**. *See* ECF No.[4]. Moreover, the Motion simply reasserts Plaintiff's previous meritless claims and simply disagrees with the Court's Order of dismissal. As such, the Court certifies that this appeal is not taken in good faith, and the Motion ECF No.[9] is DENIED." (**Emphasis**).

[7] Plaintiff's appeal is pursued in good faith. There is nothing exotic or esoteric about the legal claims and statements of facts stated in his Complaint. Plaintiff's appeal will succeed because his Complaint's factual allegations have evidentiary support, and will have further evidentiary support during, and after, discovery; and its claims, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law. F. R. CIV. P. 11(b).

[8] ***Coppedge v. United States*, 369 U.S. 438, 446 (1962)**

Orders dismissing Plaintiff's Complaint and Fed.R.Civ.P. (60)(b)(6) Motion—carelessly written and poorly supported. Petitioner also requested to submit a brief.

In February 26, 2020 judge Luck of the United States Eleventh Circuit Court of Appeals, citing ***Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002)**, **denied** Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis "**because the appeal is frivolous**." [APPENDIX A].

REASONS FOR GRANTING THE PETITION

The United States Eleventh Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. **Sup. Ct. Rule 10(c)(2019).**

THE UNITED STATES DISTRICT COURT AND THE CIRCUIT COURT OF APPEALS IGNORED THIS COURT'S COMMANDS IN *DENTON v. HERNANDEZ*, 504 U.S. 25 (1992), *NEITZKE v. WILLIAMS*, 490 U.S. 319 (1989), *COPPEDGE v. UNITED STATES*, 369 U.S. 438 (1962), AND *CRUZ v. HAUCK*, 404 U.S. 59 (1971).

STANDARD OF REVIEW

"[A] [28 U.S.C. §]1915(d)[9] dismissal is properly reviewed for an abuse of discretion." ***Denton v. Hernandez*, 504 U.S. 25, 33 (1992)**[emphasis].

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[9] Petitioner notices that current 28 U.S.C. §1915(d) states

"The officers of the court shall issue and serve all process, and perform

STANDARD OF FRIVOLITY

"[A] Complaint, containing as it does, both factual and legal allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." ***Denton*** at 31, quoting from ***Neitzke v. Williams*, 490 U.S. 319, 325 (1989).** ***Napier***[10](*svpra.*) purports to obey this Court's commands in ***Denton*** and ***Neitkze***, but in its Order denying Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis circuit court judge Robert Luck flouted them.

Circuit court Judge Luck **deliberately avoided elaborating about what factual, and legal allegations**, in Petitioner's Complaint and Fed. R. Civ. P. 60(b)(6) Motion, he deemed to be frivolous in denying Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis **with the intention of evading this Court's** review.[11] This Court should not allow it.

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all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases." [Source: Legal Information Institute, Cornell Law School, 2020]. Currently, ***Denton*** and **Neitzke** appears to refer to **28 U.S.C. §1915(a)(3)** and **28 U.S.C. §1915(e)(2)(B), not** 28 U.S.C. §1915(d).

[10] ***Bilial v. Driver, 251 F.3d 1346, 1348-1349* (11th Cir. 2001).**

[11] ***Retirement Plans Committee of IBM, et al. v. Larry W. Jander, et al.*, 589 U.S. ____ (2019)**, No.18-1165 [January 14, 2020], page 3. ***F. Hofpmann-La Roche, Ltd. V. Empagran, S.A.*, 542 U.S. 155, 175 (2004). *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).**

In an abundance of caution, Petitioner will refer to those factual and legal allegations, including his Motion/Petition, that the district court determined to be frivolous.

THE ARGUMENT

1. Factual Allegations are not frivolous under 28 U.S.C. §1915(e)(2)(B)(i).

Petitioner's Complaint's factual allegations **(Complaint, ¶¶8-18, *Svpra.*)** have evidentiary support, and will have further evidentiary support during, and after, discovery; and its claims, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

The district court decided that the factual allegations are frivolous because "in essence, Plaintiff takes issue with Judge Altonaga's ultimate conclusion that his previous claims be dismissed"; that they are "fantastic and delusional...claims" comparing them to those where a Plaintiff accused government officials of causing the September 11th, 2011 events.(Order, pages 4-5)[APPENDIX D].

Petitioner is suing Defendant Altonaga, in her ***individual capacity*** for selling his claims against The School Board of Miami-Dade County, Florida, and five of its officials sued in their individual capacities, including the superintendent Defendant Alberto Carvalho, to Defendant Walter Harvey and Alberto Carvalho

in exchange for Harvey and Carvalho hiring the law firm of Defendant Altonaga's husband, **Holland & Knight, LL.P.**

The facts state **why**, **how**, **when**, and **where** they accomplished their criminal acts. **They are facts, not conjectures**. By comparing Petitioner's claims to those in ***Gallop v. Cheney*, 642 F.3d 364 (2d Cir. 2011)** the Court employed an extravagant and mischievous label to discredit them; and attempt to portray Petitioner as a crackpot. In other words, judge Bloom disbelieved the facts. This, as this Court warned lower court judges in ***Neitzke***[12], they must refrain from doing. Otherwise, they would violate Plaintiffs' right to a Jury Trial protected by the Seventh Amendment to the Constitution of the United States (See ***infra***.).

The frivolity standard is elusive[13]. If the district court judge found them

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[12] ***Neitzke v. Williams*, 490 U.S. 319, 327 (1989)**: "What Rule 12(b)(6) does not countenance are dismissals based on a **judge's disbelief of a complaint's factual allegations**. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support." (**Emphasis**).

***Firestone Financial Corp. v. Meyer*, 796 F.3d 822, 827 (7th Cir. 2015)**. The Circuit Court found that the District Court's determination that a litigant's **factual allegations** were "**implausible**" constitutes an erroneous application of Twombly and Iqbal. The trial court had ""determined that it was "implausible to allege that somehow Firestone committed orally to provide a half million dollars unsecured to what was essentially a comparative startup business."" (**Emphasis**).

[13] "The elusive nature of the frivolity standard is partly demonstrated by the

improbable, she should have properly disposed of them on summary judgment[14], not svam•spontem dismissing the Complaint before Defendants could answer it.

If federal judges are all too familiar with "fantastic or delusional claims", they are also all too familiar with corrupt judges.

2. Legal Claims are not frivolous under 28 U.S.C. §1915(e)(2)(B)(i) and §1915(e)(2)(B)(iii).

A. Petitioner seeks monetary relief against Defendant Altonaga who is not immune against Civil RICO claims for criminal acts performed *in her individual capacity*.

Defendant Altonaga does **not** enjoy judicial immunity from damages liability for acts which are not performed in her ***judicial capacities*** **(i.e. bribery, obstruction of justice, money laundering, engaging in monetary transaction derived from them, and conspiracy to commit all of the above).**[15] Bribery, obstruction of justice, money laundering, and engaging in monetary transaction derived from them are **criminal acts**, **not** judicial acts; and Defendants Harvey and Carvalho dealt with Altonaga in her capacity as a common criminal **to steal**

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number of times this Court has vacated findings of bad faith by the lower courts." ***Cruz v. Hauck*, 404 U.S. 59, 65 (1971).**

[14] ***Denton v. Hernandez*, 504 U.S. 25, 32 (1992).**

[15] ***Dennis v. Sparks*, 449 U.S. 24, 27 (1980)** "[Judges] are subject to ***criminal prosecutions*** as are other ***citizens***." **(Id. at 31)** (***emphasis***).

Petitioner's money[16], not in her judicial capacity[17].

The relevant RICO statutes (**18 U.S.C. §1961 *et seq.***) at issue in Petitioner's Complaint **neither expressly nor impliedly immunize a federal judge—sued in her individual capacity—from liability for crimes and civil RICO damages**. A judge is just a citizen or **person** within the meaning of I8 U.S.C. §§ 1961(3) and 1962(c). "[T]he RICO statute provides that its terms are to be liberally construed to effectuate its remedial purposes." ***Boyle v. United States*, 556 U.S. 938, 944 (2009)**. For the same reasons a federal judge is not immune in her individual capacity from a ***Bivens***[18] cause of action.

B. Even if Altonaga is immune under *Stump* v. *Sparkman*, 435 U.S. 349 (1978), her immunity does not extend to Defendants Harvey and Carvalho under *Dennis v. Sparks*, 449 U.S. 24 (1980).

The district court's Order and the court of appeal's Order are silent regarding the other two Defendants —Harvey and Carvalho.[19, 20] **Judge Altonaga is not**

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16 "Thieves for their robbery have authority
When judges steal themselves."

William Shakespeare. ***Measure for Measure***, Act 2II, Sc. 2.

17 ***Stump* v. *Sparkman*, 435 U.S. 349, 362 (1978).**

18 ***Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).**

immune against RICO claims in her individual capacity, ***but even if she were immune***, **her immunity does not extend to Harvey and Carvalho**.[19, 20]

3. Petitioner's Complaint states a claim on which relief may be granted.

Petitioner's Complaint is well-drafted, and more than sufficiently and comfortably meets and surpasses the requirements of ***Iqbal***'[21]s incantation. It perfectly states claims upon which relief may be granted[22].

4. The district court's Order violated Petitioner's Equal Protection rights Protected by the Fifth Amendment to the Constitution of the U.S.. Petitioner's Motion pursuant to Fed. R. Civ. P. 60(b)(6) should have been granted and the district court's Order should have been vacated.

[19, 20] Each Defendant **separately** and **independently** faces 33 Counts in the Complaint: Harvey (Counts 34 through 66), Carvalho (Counts 67 through 99). Petitioner providently drafted his Complaint in **this** manner for **this** contingency.

[20] ***Dennis v. Sparks*, 449 U.S. 24, 29 (1980)**. Judicial immunity does not insulate "from damages liability...private persons who corruptly conspire with the judge" in a § 1983 action.

[21] ***Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)**.

[22] Close questions of federal law...have on a number of occasions arisen on motions to dismiss for failure to state a claim, and have been substantial enough to warrant this Court's granting review, under its certiorari jurisdiction, to resolve them. ***Neitzke*** at 328.
Indeed, we recently reviewed the dismissal under Rule 12(b)(6) of a complaint based on 42 U.S.C. §1983 and found by a 9-to-0 vote that it had, in fact, stated a cognizable claim—a powerful illustration that a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit. ***Neitzke*** at 329.

The judiciary is one of the three branches of government.[23] The Fifth Amendment restrains "the power of the general government."[24] It forbids the federal government from denying to U.S. citizens a "fair trial in a fair tribunal"[25], and the Equal Protection of the laws[26] including access to the courts[27, 28].

Had a paying—well-connected and represented by a similarly well-connected lawfirm—Plaintiff, instead of an indigent pro•se Plaintiff like Petitioner, submitted Petitioner's Complaint to judge Bloom, she would not have svam•spontem dismissed it on account of being frivolous.

Congress enacted the in forma pauperis statute to assure "**equality of consideration for all litigants.**" ***Nietzke v. Williams*, 490 U.S. 319, 329 (1989).** The district court, by arbitrarily svam•spontem dismissing Plaintiff's Complaint,

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[23] *Barron ex rel. Tiernan v. Mayor of Baltimore,* 32 U.S. 243, 247 (1833).

[24] "When performing federal judicial duties, a federal judge performs the ""**functions of government itself**"" **Jefferson County v. Acker, 92 F.3d 1561, 1572** (11th Cir. 1996), *en banc*, quoting from ***United States v. New Mexico*, 455 U.S. 720, 735, 102 S.Ct. 1373, 1383 (1982). (Emphasis added).**

[25] "A fair trial in a fair tribunal is a basic requirement of due process." ***In re Murchison et al.*, 349 U.S. 133, 136 (1955).**

[26] *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

[27] *Cruz v. Hauck*, 404 U.S. 59, 61-66 (1971).

[28] *Romer v. Evans*, 517 U.S. 620, 633 (1996).

treated Petitioner differently from paying Plaintiffs, violated his fundamental right of access to the courts, and arbitrarily deprived him of "the considerable benefits of the adversary proceedings contemplated by the Federal Rules [of Civil Procedure]." ***Nietzke*, at 330.**

Federal Rule of Civil Procedure 60(b)(6) authorizes federal courts "to vacate judgments whenever such action is appropriate to accomplish justice" ***Klapprott v. United States*, 335 U.S. 601, 614-15 (1949)**, while also cautioning that it should only be applied in 'extraordinary circumstances,' ***Ackerman v. United States*, 340 U.S. 193 (1950).**" ***Liljeberg v. Health Services Acquisition Corp.*, 486 US 847, 864 (1988).**

Since the district court's violation of a Plaintiff's **Equal Protection** rights protected by the **Fifth Amendment to the United States Constitution** qualifies as an "extraordinary circumstance", the district court should have **vacated** its Order svam•spontem dismissing Petitioner's Complaint on the ground that it is **legally frivolous**.

5. The district court's Order violated Petitioner's right to a Jury Trial Protected by the Seventh Amendment to the Constitution of the U.S.. Petitioner's Motion pursuant to Fed. R. Civ. P. (60)(b)(6) should have been granted and the court's Order should have been vacated.

"It is settled law...that the [Seventh] Amendment's jury guarantee extends to statutory claims unknown to the common law, so long as the claims can be said to

'*soun[d] basically in tort*,' and seek legal relief." ***City of Monterey v. Del Monte Dunes at Monterey, Ltd., et al.*, 526 U.S. 687, 689 (1999)**, quoting ***Curtis* v. *Loether*, 415 U. S. 189, 195–196 (1974)**. "There can be no doubt that § 1983 claims sound in tort" and that "*[d]amages for a constitutional violation are a legal remedy.*" *Ibid.* (*emphasis*).

Civil RICO allows **any person** to sue for **damages**[29] caused by glorified torts.[30]

Bivens causes of actions allow a person to sue for damages for constitutional torts akin to those allowed under a 42 USC §1983 causes of actions.

English common law *circa* 1791 did not countenance *judges* deciding upon the credibility of allegations of facts in the *demurrer to the pleadings*.

> An issue upon matter of law is called a demurrer: and it confesses the facts to be true, as stated by the opposing party; but denies that by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a legitimate excuse.
>
> Sir William Blackstone. ***Commentaries on the Laws of England*** (1765-1769), Book 3, CHAPTER XXI. Of Issue and Demurrer.

Judge Bloom's determination that the claims and **facts** in Plaintiff's Complaint

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[29] **18 USC §1964(c)** "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the ***damages*** he sustains and the cost of the suit, including a reasonable attorney's fee..." (***emphasis***).

[30] **18 USC §1961(1)**.

are "baseless", "fantastic" and "delusional" is based on nothing but her ostensible **disbelief** of real, objective, plausible, and provable **facts** and allegations of bribery, obstruction of justice, and money laundering against Defendants[31]. Judge Bloom thus made a finding of fact in violation of her constitutional judicial duties through a tired subterfuge employed against indigent pro•se Plaintiffs.[32] Her place is on the bench, not in the jury box.[33]

Federal Rule of Civil Procedure 60(b)(6) authorizes federal courts "to vacate judgments whenever such action is appropriate to accomplish justice" ***Klapprott v. United States*, 335 U.S. 601, 614-15 (1949)**, while also cautioning that it should only be applied in 'extraordinary circumstances,' ***Ackerman v. United***

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[31] ***Nietzke v. Williams*, 490 U.S. 319, 327 (1989)**: "What Rule 12(b)(6) does not countenance are dismissals based on a **judge's disbelief of a complaint's factual allegations**. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support." (emphasis).

[32] The Order is typical boilerplate, readily available to contemptuous federal judges against indigent pro•se Plaintiffs; rife with appeals to utterly irrelevant legal authorities to excuse extravagant labeling of Plaintiff's claims (e. g. ***Gallop v. Cheney*, 642 F.3d 364, 366, 368-69 (2nd Cir. 2011)** [Order, pgs. 4-5]; and outright lies (e.g. "[i]n essence, Plaintiff takes issue with Judge Altonaga's ultimate conclusion that his previous claims be dismissed.") [Order, p. 4].

[33] "The controlling distinction between the power of the court and that of the jury is that the former is the power to determine the law and the latter to determine the facts." ***Dimick v. Schiedt*, 293 US 474, 450 (1935).**

States, **340 U.S. 193 (1950).**" ***Liljeberg v. Health Services Acquisition Corp.*, 486 US 847, 864 (1988).**

Since the district court's violation of a Plaintiff's **right to a Jury Trial** protected by the **Seventh Amendment to the United States Constitution** qualifies as an "extraordinary circumstance", the district court should have **vacated** its Order svam•spontem dismissing Petitioner's Complaint on the ground that it is **factually frivolous**.

6. The Circuit Court of Appeals ignored this Court's command in *Cruz v. Hauck*, 404 U.S. 59 (1971) and *Coppedge v. United States*, 369 U.S. 438 1962).

Circuit court judge Luck denied Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis without an opinion thereby arbitrarily and deliberately denying Petitioner's "**rights of equal access to judicial machinery**." ***Cruz v. Hauck*, 404 U.S. 59, 61 (1971)**[34]

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[34] ***Cruz v. Hauck*, 404 U.S. 59 (1971).** "Our holdings have steadily chipped away at the proposition that appeals of the poor can be disposed of **solely on summary and abbreviated inquiries into frivolity rather than upon the plenary consideration granted paying appellants**. (*Id.* at 62)(**emphasis**).

""**[T]he civil courts of the United States and each of the States belong to the people of this country and that no person can be denied access to those courts, either for a trial or an appeal, because he cannot pay a fee...**"" (*Id.* at 64) (**emphasis**). "It is apparent that this disparate treatment has the effect of classifying appellants according to **wealth**, which, like race, is a **suspect classification**."(*Id.* at 65)(**emphasis**).

JUSTICE SOTOMAYOR was recently concerned by the bad faith exhibited by the judges of the Fifth Circuit Court of Appeal who "summarily rejected pro se filings" "without so much as a glance."[35] This lamentable conduct is widespread[36]. As circuit court judge Luck has demonstrated in Petitioner's case, it is also practiced by at least this judge in the Eleventh Circuit Court of Appeals.

Circuit court Judge Luck **deliberately** avoided elaborating about what factual, and legal allegations, in Petitioner's Complaint and Fed. R. Civ. P. 60(b)(6) Motion/Petition, he deemed to be frivolous in denying Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis **with the intention of evading**

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[35] ***Louie M. Schexnayder, Jr. v. Darrel Vannoy Warden*, 589 U.S. _____ (2019)**, No.18-8341 [Dec. 9, 2019] (The petition for a writ of certiorari is denied).

[36] ***Posner: Most judges regard pro se litigants as 'kind of trash not worth the time.'*** ABA Journal, by Debra Cassens Weiss. September 11, 2017, 11:57 AM.

> "Judge cites...rebuffed efforts to aid pro se litigants in a new interview explaining his decision to suddenly retire from the Chicago-based 7th U.S. Circuit Court of Appeals....In the 7th Circuit, staff lawyers review appeals from pro se litigants, and their recommendations are generally rubber-stamped by judges...Posner wanted to give the pro se litigants a better shake by reviewing all of the staff attorney memos before they went to the panel of judges. Posner had approval from the director of the staff attorney program. ""But the judges, my colleagues, all 11 of them, turned it down and refused to give me any significant role. I was very frustrated by that."" **Richard Posner, Seventh Cir. Judge, retired.**

this Court's review.[37] This Court should not allow it.

In ***Coppedge v. United States*, 369 U.S. 438, 446 (1962)**[38] "the only cognizable issue is whether a **summary survey** (as opposed to **plenary deliberation**) suggests **that a substantial argument could be presented**." ***Cruz v. Hauck*, 404 U.S. 59, 62 (1971).**

RELIEF SOUGHT

Petitioner respectfully requests that this Court grant Petioner's **motion for leave to proceed *in forma pauperis*** and the **petition for a writ of certiorari**, **vacate** the judgment of the Eleventh Circuit Court of Appeals, and **remand** it there for consideration of his appeal "**on the merits in the same manner that it considers paid appeals.**" ***Coppedge*, 446** ; and to consider "**arguable claims... made by petitioner to support his application for leave to appeal...[wherein] those mentioned would alone have warranted the allowance of an appeal *in***

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[37] ***Retirement Plans Committee of IBM, et al. v. Larry W. Jander, et al.*, 589 U.S. ____ (2019)**, No.18-1165 [January 14, 2020], page 3. ***F. Hofpmann-La Roche, Ltd. V. Empagran, S.A.*, 542 U.S. 155, 175 (2004)**. ***Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)**.

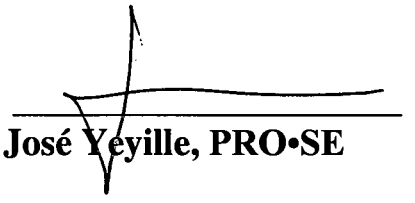
[38] ***Coppedge v. United States*, 369 U.S. 438, 446 (1962)**. "[I]f, from the face of the papers he has filed, it is **apparent** that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal *in forma pauperis*...and proceed to consideration of the appeal on the merits in the same manner that it considers paid appeals." (**emphasis**).

forma pauperis." [**emphasis**]. ***Coppedge*** 454.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



José Yeyille, PRO•SE

Date: April 24, 2020

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

JOSÉ YEYILLE —PETITIONER

vs.

CECILIA ALTONAGA, WALTER HARVEY, and ALBERTO CARVALHO —RESPONDENTS

PETITIONER'S COMMENTARY ON SUPREME COURT RULE 29(3) REGARDING PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

Petitioner certifies that, to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, **no** "service of a single copy on each other separately represented party" is necessary because Defendants were **never served with process** of Petitioner's Complaint. Petitioner's Complaint was **svam•spontem dismissed** by the United States District Court for the Southern District of Florida **without service of process**; and the United States Eleventh Circuit Court of Appeals **denied** his Motion to Proceed in Forma Pauperis pursuant to Fed. R. App. P. 24(a)(5).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 7th, 2020

José Yeyille