No. _____

19-8652

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

IMMANUEL F. SANCHEZ,

Petitioner,

vs.

MANUEL L. REAL, *et al.*,

Respondents.

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

PETITION FOR WRIT OF *CERTIORARI*

Immanuel F. Sanchez
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Hearing is required by law in these proceedings. *See* 28 U.S.C. § 1915(a); *Coppedge v. United States*, 369 U.S. 438, 452 (1962) ("We heard oral argument."). The government cannot "affirmatively abuse its power" and deny Petitioner his right to hearing. "The power vested in a judge is to hear and determine, not to determine without hearing." *In re Buchman*, 123 Cal.App.2d 546, 560 (1954).

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OTHER LEGAL AUTHORITIES

Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights, *Robert C. Waters, Tort & Insurance Law Journal*, Spr. 1986 21 n 3, p 509-516 7

Nemo est supra leges "No one is above the laws" 8

Congressional Globe, 39th Cong., 1st Session 1680, Rep. Mr. Trumbull (1866) 13, 29

The New Kings of America, Mark I. Sutherland (2007) 13

Way, *A Call for Limits to Judicial Immunity: Must Judges be Kings in their Courts?*, 64 JUDICATURE 390 (1981) 13

Kates, *Immunity of State Judges Under the Federal Civil Rights Act:* Pierson v. Ray *Reconsidered,* 65 Nw. U.L. REV. 615 (1970) 13

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Nahmod, *Persons Who are not "Persons:" Absolute Individual Immunity Under Section 1983*, 28 DEPAUL L. REV. 1 (1978) 13

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Dolus et fraus una in parte sanari debent, "Deceit and fraud should always be remedied" 15

Nulla pactione effici potest ne dolos praestetur, "It cannot be effected by any agreement, that there is no accountability for fraud" 15

Dolo et fraus nemini patrocinentur, "Deceit and fraud shall excuse or benefit no man" 15

Fraus legibus invisissima, "Fraud is most hateful to law" 22

Jus et fradem numquam cohabitant, "Right and fraud never dwell together" 24

"Fraud avoids all judicial acts, ecclesiastical or temporal" 24

Fraus est jus nunquam cohabitant, "Fraud and justice never dwell together" 24

Fraus est celare fraudem, "It is a fraud to conceal a fraud" 24

Qui fraudem fit frustra agit, "He who commits fraud, acts in vain" 24

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Omnibus Consolidated Rescissions and Appropriations Act of 1996, 110 Stat. 1321 (OCRA) 28

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Federal Courts Improvement Act of 1996 (Pub. L. No. 104-317, 110 Stat. 3847)	28
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Rosenberg, Stump v. Sparkman: *The Doctrine of Judicial Impunity*, 64 VA. L. REV. 833 (1978)	29
Judicial Immunity: Developments in Federal Law, 33 BAYLOR L. REV. 351 (1981)	29
Block, Stump v. Sparkman *and the History of Judicial Immunity*, 1980 DUKE L.J. 879	29
Feldthusen, *Judicial Immunity: In Search of an Appropriate Limiting Formula*, 29 U.N.B. LJ. 73 (1980)	29
Judicial Immunity: Stump v. Sparkman, 47 UMKC L. REV. 81 (1978)	29
Liability of Judicial Officers Under Section 1983, 79 YALE LJ. 322 (1969)	29
Laycock, *Civil Rights and Civil Liberties*, 54 CHI.-KRR L. REV. 390 (1977)	29
Nagel, *Judicial Immunity and Sovereignty*, 6 HASTINGS CONST. L.Q. 237 (1978)	29
J. Locke, The Second Treatise of Civil Government, Chap. X, § 136 (T. Cook ed. 1947) (6th ed. 1764)	30

TABLE OF AUTHORITIES CITED
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OTHER LEGAL AUTHORITIES — PAGE NUMBER

Bias Against Pro Per Litigants; What It Is. How to Stop It.,
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Ann. Rept. (2003) *Advisory Letter* 12, p. 27 35

Ann. Rept. (2005) *Advisory Letter* 1, p. 26 35

Misera est servitus ubi just est vagum aot incertum,
"It is misery slavery where the law is vague or uncertain" 38

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF *CERTIORARI*

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

OPINIONS BELOW

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

JURISDICTION

The jurisdiction of this Court is invoked under U.S. CONST. Art. III, § 2 and 28 U.S.C. § 1254(1). Petitioner has a constitutional and statuary right "to a hearing on the merits of a claim over which the Court has jurisdiction." *Harmon v. Superior Court of California*, 307 F.2d 796, 798 (9th Cir. 1962). "The petition for certiorari, pro se, sought reversal of the order of the Court of Appeals denying petitioner's motion for appeal in forma pauperis. ... Such an order is reviewable on certiorari." *Pollard v. United States*, 352 U.S. 354, 359 (1957) (quoting *Wells v. United States*, 318 U.S. 257 (1943)).

QUESTIONS PRESENTED

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

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

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

Manuel L. Real (as an individual and in his official capacity as District Judge of the United States Central District Court of California); Alexander F. MacKinnon (as an individual and in his official capacity as Magistrate Judge of the United States Central District Court of California);

Kiry K. Gray (as an individual and in her official capacity as Clerk of the Court of the United States Central District Court of California); Christine Chung (as an individual and in her official capacity as Deputy Clerk of the United States Central District Court of California); Llene Bernal (as an individual and in her official capacity as Deputy Clerk of the United States Central District Court of California); Estrella Tamayo (as an individual and in her official capacity as Deputy Clerk of the United States Central District Court of California); Chris Sawyer (as an individual and in his official capacity as Deputy Clerk of the United States Central District Court of California); D.D. (as an individual and in his official capacity as Deputy Clerk of the United States Central District Court of California); R. Smith (as an

individual and in his official capacity as Deputy Clerk of the United States Central District Court of California); and Martha Torres (as an individual and in her official capacity as Deputy Clerk of the United States Central District Court of California).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Preamble, Article III, and the First, Fifth, Seventh, Ninth, Eleventh, and Thirteenth Amendments to the Constitution of the United States of America are involved. The statutes involved are, (1) Sections 2, 1341, 1343, 1503, 1961-1968, Title 18, United States Code; (2) Sections 454, 636, 955, 1331, 1343, 1367, 1391, 1915, 2201, 2202, 2403, Title 28, United States Code; (3) Sections 1981, 1983, 1985, Title 42, United States Code; and (4) Subsection (a)(4), Section 68632, California Government Code.

STATEMENT OF THE CASE

On July 4, 2019, *pro se* Petitioner commenced a civil action in the United States District Court of the Los Angeles Central District of California pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et. seq.* against the Respondents.

The "COMPLAINT" alleged a conspiracy to violate and violation of the laws and Constitution of the United States of America, violation of Petitioner's Frist Amendment right to petition, violation of Petitioner's Fifth

Amendment right to due process of law and equal protection of the laws, violation of Petitioner's Seventh Amendment right to a jury trial, violation of Petitioner's Ninth Amendment right to the truth in evidence, violation of Petitioner's Eleventh Amendment right to commence a suit in law and equity against one of the United States, violation of Petitioner's Thirteenth Amendment right to be free from slavery, violation of "SUBSTANTIVE" and "PROCEDURAL" due process of law, and violation of "EQUAL PROTECTION" guarantee.

Briefly stated, the "COMPLAINT" alleged that the deceased district court judge Manuel L. Real and the magistrate judge Alexander F. MacKinnon practiced fraud and denied Petitioner his constitutionally guaranteed and protected rights, illegally interfered with course of litigation, and cheated or defrauded him of his property.

On July 10, 2019, deputy clerk R. Smith filed Petitioner's "COMPLAINT" and "MOTION to Proceed In Forma Pauperis" and failed and refused to permit issuance and service of process of the "COMPLAINT" and summons after Petitioner requested service.

Thereafter, the defendant in the "COMPLAINT" Kiry K. Gray in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, and without referring to any law, statute or rule assigned two (2) different district court judges to hear Petitioner's case, with two (2) different courtrooms, and two (2) different calendars contrary to the self-calendaring

procedures of the district court's website of either judge as only one (1) judge in (1) court with one (1) calendar is required for hearing. At the same time, the defendant Kiry K. Gray assigned the case to the defendant in the "COMPLAINT," magistrate judge Alexander F. MacKinnon and a copy of the notice of judge assignment and reference to a magistrate judge appears at Appendix A.

On July 15, 2019, in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, the defendant in the "COMPLAINT" Alexander F. MacKinnon filed again with the district court a recommendation that Petitioner be denied *in forma pauperis* status and that proceedings be terminated and a copy of the recommended disposition appears at Appendix B. In filing the recommendation, that Petitioner's "MOTION to Proceed In Forma Pauperis," be denied, the defendant Alexander F. MacKinnon again did not file any proposed findings of fact and did not serve or mail a copy of the recommended disposition to Petitioner. The defendant Alexander F. MacKinnon neither held a hearing nor reviewed the actual evidence attached to the "COMPLAINT."

On July 16, 2019, in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, the magistrate judge Rozella A. Oliver received and accepted the unserved and unfounded recommendation filed in the district court and submitted it to the district court judge Michael W. Fitzgerald for a summary order denying Petitioner's "MOTION to Proceed In

Forma Pauperis" and a copy of the denial or dismissal appears at Appendix B.

On July 30, 2019, Petitioner filed with the district court a "MOTION for Reconsideration" of the order denying his *in forma pauperis* motion and dismissing his case.

On August 5, 2019, in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, the district court judge Michael W. Fitzgerald denied Petitioner's "MOTION for Reconsideration" and a copy of the denial appears at Appendix C.

On September 13, 2019, Petitioner filed with the district court a "NOTICE of Appeal" from the order denying his *in forma pauperis* motion and dismissing his case. At the same time, Petitioner filed a "MOTION for Leave to Appeal In Forma Pauperis."

On September 19, 2019, in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, the district court judge Michael W. Fitzgerald issued a summary order denying Petitioner's MOTION for Leave to Appeal In Forma Pauperis" and a copy of the denial appears at Appendix D.

On October 9, 2019, Petitioner filed with the court of appeals a "MOTION to Proceed on Appeal In Forman Pauperis."

On November 21, 2019, in secret-i.e., without notice or a hearing, and/or one-sided determination of proceedings, the court of appeals judges Edward Leavy, Consuelo M. Callahan, and Carlos T. Bea denied Petitioner's

in forma pauperis motion and dismissed the appeal and a copy of the order appears at Appendix E.

A timely petition for rehearing was denied by the court of appeals on February 14, 2020 and a copy of the order denying rehearing appears at Appendix F.

REASONS FOR GRANTING THE PETITION

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

The district court's decision dismissing Petitioner's *in forma pauperis* "COMPLAINT" based on immunity is fundamentally wrong and constitutes an absolute abuse of discretion. *See* Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights, *Robert C. Waters, Tort & Insurance Law Journal*, Spr. 1986 21 n 3, p 509-516. In fact, there is no immunity for violations of constitutional rights under color of federal authority. *See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 456 F.2d 1339, 1346-1347 (2d Cir. 1972) (denying absolute immunity to federal officials).

The district court "can assert no reliance claim which can support an absolute immunity. As Mr. Justice Frankfurter said in *Monroe*, 365 U.S., at 221–222. ... 'This is not an area of commercial law in which, presumably, individuals may have arranged their affairs in reliance on the expected stability of decision.' Indeed, [judges] simply cannot 'arrange their affairs' on an assumption that they can violate constitutional rights indefinitely since

injunctive suits against [federal] officials under [*Bivens*] would prohibit any such arrangement. And it scarcely need be mentioned that nothing in [case-law] encourages [judges] to violate constitutional rights or even suggests that such violations are anything other than completely wrong." *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 699-700 (1978).

Petitioner's "COMPLAINT" includes all factual allegations necessary to sustain a finding that the defendants violated his clearly established constitutional fundamental rights. *See generally Compl.* Dist. Ct. Dkt. No. 1. The district court's admission that "no finding regarding frivolousness" was made, Dist. Ct. Dkt. No. 9 at 4, L 5-7, is not mere happenstance. Clearly, Petitioner's claims for violations of constitutional rights are not frivolous and are "cognizable" under 28 U.S.C. § 1331. The statute, § 1331 provides a cause of action for such claims. *See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. at 398-399.

In spite of these facts, the district court asserted that the occupant of judicial office is "above the laws" in the sense that his conduct is entirely immune from judicial scrutiny and granted immunity from suit for his unofficial, unlawful, or unconstitutional acts engaged in knowingly in direct violation of fundamental maxim of common law. *Nemo est supra leges* "No one is above the laws." The judge is not above the laws. As Ranking Member of the Committee on the Judiciary, Mr. Lamar Smith so eloquently put it

"Though judges rule on the law, they are not above the laws."

The Law "reject[s] any absolute ... immunity from all court process." *Clinton v. Jones*, 520 U.S. 681, 717 (1997). "[A]lthough the [judge] ... 'is placed on high,' 'not a single privilege is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen. .... [H]e is ... subject to the laws[uit] for his purely private acts." *Id.* at 696.

In *Ex parte Young*, 209 U.S. 123, 159-160 (1908), the Supreme Court explained: "The attempt of a [judicial] officer to enforce an unconstitutional statute is a proceeding without authority of, and does not affect, the [Nation] in its sovereign or governmental capacity, and is an illegal act and the officer is stripped of his official character and subjected in his person to the consequences of his individual conduct. The [Nation] has no power to impart to its officer any immunity from responsibility to the supreme authority of the United States." *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974).

"The public has an overriding interest in the effective functioning of its government ... [and] it invests no discretion in its officials to violate the law. Moreover, the public has no interest in shielding high government officials from liability for unlawful or unconstitutional acts engaged in knowingly. On the contrary, when an [judicial] officer engages in illegal activity, the cloak of his or her governmental office should not be used to immunize wrongdoing." *Kilgore v. Younger*, 30 Cal.3d 770, 790 (1982).

The Supreme Court articulated this important axiom in *United States v. Lee*, 106 U.S. 196 (1882), "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All of the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. ... It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives." *Id.*, at p. 220.

Significantly, the district court's decision "created a privilege so extensive as to be almost unlimited and altogether subversive of the fundamental principle that no man in this country is so high that he is above the law. With the memories of gross abuses by the highest officers of our land still fresh, it is especially important that an illegal act not be approved by this court as an official duty encompassed within the mandate of public office. ... The ... [judicial] office is a particularly sensitive office since the holder of that position is the ... [trier of] law officer of the [court]. As the ... [judge for] the ... [United States, the judge] must take responsibility for his own violations of statutory or constitutional prohibitions.

The average citizen who commits an unlawful act may be held both criminally and civilly liable. Surely, the [judge] claiming the protection of his office is no more authorized by that office to commit a crime or an

unconstitutional act than is any other citizen of this [nation]. Is ... [not] too much to expect that the [judge] meticulously obey both the letter and the spirit of the law. ... The [judge] is scarcely in a position to claim that he is authorized to violate any provision of the law. Since the [judge] occupies a ... [special] position, he should not be able through an unlawful act to cause injury to a citizen of this [nation] with impunity. The public interest is not being served and the victim of his illegal act should be free to pursue his legal remedy for damages. ...

[Because of] the importance of the public interest in protecting civil rights from incursions by government personnel ... [t]he court pointed out that a cause of action for a constitutional violation would be 'drained of meaning' if officials were accorded absolute immunity for their constitutional transgressions. ... If, as the Government argues, all officials exercising discretion were exempt from personal liability, a suit under the Constitution could provide no redress to the injured citizen, nor would it in any degree deter federal officials from committing constitutional wrongs. The ... absolute immunity from damages liability to ... federal ... officials would seriously erode the protection provided by basic constitutional guarantees." *Kilgore*, 30 Cal.3d at 791-792.

It is clearly established that Petitioner has "a right to sue federal officials for damages as a result of constitutional violations." *Clinton v. Jones*,

520 U.S. at 702 n. 36.[1] Evidently, the district court's decision is contrary to the letter and spirit of the law because the defendants are not entitled to absolute immunity from suit for monetary, injunctive, or declaratory relief. "A President, like Members of Congress, judges, prosecutors, or congressional aids ... are not immune" from civil lawsuit. *Id.* at 694.

A judge no less than any other man is subject to the processes of civil law. A judge "is not above the law's commands: 'With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the [Judicial] be under the law. ... Sovereignty remains at all times with the people, and they do not forfeit through elections the right to have the law construed against and applied to every citizen." *Nixon v. Sirca*, 487 F.2d 700, 711 (D.C. Cir. 1973).

Furthermore, "[t]he Constitution makes no mention of special immunities. Indeed, the [Judicial] Branch generally is afforded none. This silence cannot be ascribed to oversight." *Id.* The district court cannot refashion the Constitution.[2]

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[1] The record discloses that Petitioner has a "Right to Sue Letter" from the General Counsel of the Administrative Office of the United States Courts authorizing the filing of his lawsuit against the Respondents in and by 28 U.S.C. § 1346(b). *See* Dist. Ct. Mot. No. 8, PX "A." The letter states that Petitioner has "the right to file suit in an appropriate United States district court." As a consequence, the Respondents or employees of the United States judiciary waived their immunity under § 1346(b). The district court intentionally overlooked or ignored this material point of fact and law when it dismissed Petitioner's case.

[2] The district court cites *Pierson v. Ray*, 386 U.S. 547 (1967), but the conclusion in *Pierson* is perplexing and utterly ignored the Constitution, the remedial purposes of the Civil Rights Act, and the long-standing rule that a remedial statute will be construed liberally to achieve its purpose. Not only did the majority offer a complete distortion of congressional intent but also decided that the phrase "[e]very person ... shall be liable" meant every person except judges. Yet Congress clearly had intended to remedy a serious injustice being inflicted

"The assumption that federal and state officials are not to be held responsible for violations of United States laws, when done under color of statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched." *Congressional Globe*, 39th Cong., 1st Session (1866), at p. 1758, Rep. Mr. Trumbull.

The district court wrongly asserted that judicial officers are immune or not responsible for violations of the constitutional rights of Citizens under color of statutes, rules, laws, and customs or for abuse of his or her position relying on the English law that the King can do no wrong and placed judicial officers above the law. *Judicial Tyranny: The New Kings of America*, Mark I. Sutherland (2007); Way, *A Call for Limits to Judicial Immunity: Must Judges be Kings in their Courts?*, 64 JUDICATURE 390, 393 (1981) (grant of judicial immunity allows malicious abuse of power). The district court's decision is "fundamentally wrong." In America, the Law is King and not the judge.

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on innocent people by corrupt local official, including judges. In effect, the Supreme Court created a new rule of statutory construction that judicial immunity is to be favored over congressional intent. By judicial fiat, the doctrine was conjured out of a few old English cases such as *Floyd v. Baker*, 77 Eng. Rep. 1305 (1608) that were not themselves concerned with judicial immunity from suit, but with judicial independence from the Crown. The Supreme Court, citing dicta in these cases, **invented** a completely new immunity doctrine far more expansive than the Civil War-era precedents would warrant. The doctrine in its present form did not exist in the United States or England when the civil rights legislation was passed in 1871. Kates, *Immunity of State Judges Under the Federal Civil Rights Act:* Pierson v. Ray *Reconsidered,* 65 Nw. U.L. REV. 615, 622-23 (1970) (concluding no congressional intent to grant absolute immunity under § 1983); Nahmod, *Persons Who are not "Persons:" Absolute Individual Immunity Under Section 1983*, 28 DEPAUL L. REV. 1, 3 (1978) (Court's holding for absolute immunity has potential of undercutting § 1983); *Chavers v. Stuhmer*, 786 F.Supp. 756 (E.D.Wis. 1992) ("no immunity from liability under § 1983.") (quoting *Imbler v. Pachman*, 424 U.S. 409, 417 (1976) ("The statute ... creates a species of tort liability that on its face admits of no immunities.").

The propriety of separation from England in the *Declaration of Independence* (US 1776) on the basis of this sound doctrine and unanswerable reasonable reasoning is contained in the pamphlet Common Sense. The author of Common Sense, Thomas Paine, brought up the spirit of the law in America in these lofty words: "But where, say some, is the King of America? I'll tell you, Friend. He reigns above, and does not make havoc of mankind like the royal brute of Britain. Yet, that we may not appear to be defective even in earthly honors, let a day solemnly set apart for proclaiming the charter; let it be brought forth placed in the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America *the law is king*. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other." T. Paine, *Political Writings* (1837), pp. 45-46.

Indeed, the district court claims "the prerogatives of the monarchs who asserted that 'the King can do no wrong.' ... Although we have adopted the related doctrine of ... immunity, the **common-law fiction** that 'the king . . . is not only incapable of doing wrong, but even of thinking wrong' ... was rejected at the birth of the Republic." *Clinton v. Jones*, 520 U.S. at 697 n. 24. The immunity asserted here is **common-law fiction**. *Id.* At the birth of the Republic America declared that a king is not immune for wrongdoing. *See Declaration of Independence* (US 1776) (King George held responsible for wrongdoing or violations of fundamental rights); *see also Magna Carta* (1215)

(King John held responsible for wrongdoing or violations of fundamental rights).

"Mr. Chief Justice Marshall commented (at 162-63) upon the importance of providing an individual with a remedy when he is injured by a violation of law and noted the availability of the King himself in Great Britain as a defendant in such a situation. If the King of Great Britain is subject to suit, although under the polite guise of 'petition,' it would be anomalous to conclude that [the judge] of the United States likewise the [trier of law], but certainly not entitled to claim the status of a King under the Constitution (see The Federalist, Number 69), is immune from any lawsuit whatsoever. The Chief Justice further observed in Marbury (at 163): The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *National Treasury Employees Union v. Nixon*, 492 F.2d 587, 609 (D.C. Cir. 1974).

Moreover, under fundamental maxims of common law, "Deceit and fraud should always be remedied," *Dolus et fraus una in parte sanari debent.* "It cannot be effected by any agreement, that there is no accountability for fraud," *Nulla pactione effici potest ne dolos praestetur.* "Deceit and fraud shall excuse or benefit no man," *Dolo et fraus nemini patrocinentur.* "[T]hese officials must respond in damages to the plaintiff." *Picking v. Pennsylvania R.*

Co., 151 F.2d 240, 249 (3rd Cir. 1945) (emphasis added). "[I]n civil rights cases ... there is a 'public interest in an ordinary citizen's timely vindication of [his] most fundamental rights against alleged abuse of power by government officials." *Clinton v. Jones*, 520 U.S. at 689. Petitioner's "has a right to an orderly disposition of [his] claims." *Id.*, at 710.

It is incontrovertibly clear from the record that the decision of the district court granting the defendants absolute immunity violates the law, works injustice, and constitutes an absolute abuse of discretion giving Petitioner right to writ of *certiorari*. *See State v. District Court of Jefferson County*, 213 Iowa 822, 831-832 (1931).

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

On its face § 1915(e) is unconstitutional because it considers factors that are not germane to the eligibility requirements set out in § 1915(a) and fails to consider important factors that are germane to the statutory purpose and constitutes, as a matter of law, a subterfuge to perpetrate a fraud, avoid personal liability under 42 U.S.C. § 1983 or *Bivens*, or to evade consideration of a federal issue and the *in forma pauperis* requirements under § 1915(a), which are: (1) process issued and served; (2) notice and hearing of any motion thereafter made by defendant or the court to dismiss the complaint and the grounds therefor, *Potter v. McCall*, 433 F.2d 1087 (9th Cir.1970); *Harmon v. Superior Court*, 307 F.2d 796; and (3) proceeding to final judgment against

defendant. *In re Marriage of Reese*, 73 Cal.App.3d 120, 125 (1977) (quoting *Boddie v. Connecticut*, 401 U.S. 371 (1971)).

Cal. Gov. Code, § 68632, subd. (a)(4), protects the same right and does not consider all of the factors detailed in § 1915(e). Furthermore, "[t]he purpose of § 1915 is to provide an entre, not a barrier, to the indigent seeking relief in the federal court." *Souder v. McGuire*, 516 F.2d 820, 823 (3rd Cir. 1975); *Jones v. Zimmerman*, 752 F.2d 76, 79 (3rd Cir. 1985). In fact, § 1915(e) is at odds with the very purpose of § 1915(a) because it creates a barrier to indigent seeking relief in the federal court contrary to the purpose of the *in forma pauperis* statute under *Jones* and *Souder*. § 1915(e) creates a barrier precluding access all together that impair an indigent's ability to enter the door of the courthouse in pursuit of legitimate grievances.

The filing fee requirements are a barrier to indigent accessing the courts because he cannot afford to pay for the filing fee. Even though the case is meritorious, the indigent is required to pay the filing fee. § 1915(e) permits judicial officers to 'automatically' dismiss the indigent's meritorious complaint for the purpose of imposing the filing fee. § 1915(e) codifies judicial absolutism, immunity, or fraud as a legitimate tactic to dismiss the indigent's legitimate claims and cheat or defraud him of his property. Indigents' meritorious legal claims are dismissed as frivolous or failure to state a claim.

§ 1915(e) prohibits indigents from accessing the courts to protect their rights. Indigents are required to pay to redress meritorious legal claims. §

1915(e) prevents all indigents from accessing courts. § 1915(e) precludes indigents from enjoying *in forma pauperis* status. § 1915(e) is thus constitutionally infirm as it operates to cause a First Amendment violation.

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

§ 1915(e) violates Petitioner's First Amendment right to commence or litigate a meritorious civil suit, action, appeal, or proceeding *in forma pauperis* because it hinders his efforts to pursue his legal claims. Indigent Petitioner is seeking vindication of his fundamental rights. Civil rights actions directly protect American Citizens' most valued rights. *See Bounds v. Smith,* 430 U.S. 817, 827 (1977). Civil rights actions under 42 U.S.C. § 1983 or *Bivens* vindicate basic constitutional rights.

Petitioner's "COMPLAINT" was brought pursuant to *Bivens* and alleged violations of constitutional rights under the First, Fifth, Seventh, Ninth, Eleventh, and Thirteenth Amendments of the Constitution of the United States of America. Petitioner contends that, based on United States Constitution, statutes, and court rules, he has a life, liberty, or property interest in his civil proceedings, and by denying him equal access to the courts and fair hearing of his claims, the Respondents have deprived him due process.

The Respondents' actions deprived Petitioner "of access to the courts and the possession and use of monies received through litigation of his respective personal injury causes of action. Those causes of action, and funds

collected upon their liquidation are constitutionally protected interest." *Compl.*, ¶¶ 198-201.

United States of America's Constitution, statutes and court rules give rise to a life, liberty, or property interest that is entitled to procedural due process protection. Procedural due process is a fundamental right. Petitioner is seeking vindication of a fundamental constitutional right through a *Bivens* action, and he has alleged the correct type of legal claim for a *prima facie* First Amendment violation within the meaning of *Bounds v. Smith*.

Furthermore, the government's enforcement of § 1915(e) provisions, would deny Petitioner *in forma pauperis* status in the instant proceeding and would effectively bar him from pursuing his meritorious legal claims on *certiorari*. Petitioner does not have the money necessary to prepay the filing fee. Petitioner is not employed, and he has no income. Petitioner has no money. Petitioner has no financial source of funds for him to pay any fee for filing cases in this court or elsewhere. Money is non-existent for all practical purposes. § 1915(e) prohibits Petitioner from proceeding *in forma pauperis*, and totally denies him access to court on in violation of his Frist Amendment right of access to court.

Denying *in forma pauperis* status prevents indigents from accessing the courts because they are required to pay the filing fee in order for the courts to exercise jurisdiction over their valid constitutional claims. Indigents have no money, and there is no guarantee that they will have income. §

1915(e) infringes on the indigent's right of access to the courts because he cannot pursue his claim in court. Court fees must be waived because they prevent litigants from vindicating basic fundamental rights. The First Amendment right to court access provides the means for ensuring that access rather than the ends in themselves. The *in forma pauperis* status is a means for ensuring that an indigent litigant is guaranteed First Amendment right of court access, and in Petitioner's action or proceeding, it is constitutionally required. The First Amendment right of access to the courts requires that an indigent litigant be given *in forma pauperis* status.

§ 1915(e) does not allow indigent litigants to file a civil action, appeal, or proceeding and proceed to judgement against the defendants-appellants-respondents without the payment of court fees. Indigent litigants cannot be denied a waiver of court fees. § 1915(e) prevents an indigent from filing civil actions, appeals, or writs, and enjoying *in forma pauperis* status.

Significantly, § 1915(e) burdens Petitioner's access to the courts because the underlying lawsuit implicates a fundamental interest requiring a waiver of filing fees. Petitioner's right to access the courts has been disturbed in that he is being barred from bringing his present *Bivens* claim in federal court as indigent litigant to litigate his federal constitutional causes of action *in forma pauperis*.

(2) Violation of Fifth Amendment Right to Notice or a Hearing

§ 1915(e) violates Petitioner's Fifth Amendment right to notice or a hearing because it denies him an opportunity for hearing. A hearing without notice is not a hearing. The failure to provide notice circumvented Petitioner's Fifth Amendment right to be present, and to present evidence at hearing at which the *in forma pauperis* status is at issue.

"Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1971). It is improper to deny an *in forma pauperis* motion without a hearing based on the judicial officer's *ex cathedra* determination. *See Cruz v. Superior Court*, 120 Cal.App. 175, 189 (2004). § 1915(e) permits the judge to determine case without a hearing or to conduct secret, one-sided determinations of facts decisive of rights.

"Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law. It shuts out all interference not according to established principles of justice, one of them being the right and opportunity for a hearing. ... Judicial absolutism is not part of the American way of life. The odious doctrine that the ends justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without hearing." *In re Buchman*, 123 Cal.App.2d 546, 560 (1954).

As a matter of law, § 1915(a) requires that the indigent be accorded a

hearing in which he may be heard, and where he may defend, enforce, and protect his personal rights. *See e.g. Spears v. McCotter*, 766 F.2d 179, 180 (5th Cir. 1985) ("His testimony before the magistrate judge."); *Cay v. Estelle*, 789 F.2d 318, 320 (5th Cir. 1986) ("An evidentiary hearing was held."); *Coppedge v. United States*, 369 U.S. 438, 452 (1962) ("We heard oral argument."). "[T]he judge's feeling that the case is probably frivolous does not justify by-passing that right. [Indigent] is entitled ... to be heard." *Harmon v. Superior Court*, 307 F.2d at 798.

The purpose of the hearing is to make a record to protect the *pro se* indigent and to enable the court to make an informed decision regarding the merit of the action by reference to the reality of the situation rather than by speculating as to the nature of the claim. *Cay v. Estelle*, 789 F.2d at 323. As applied § 1915(e) is constitutionally invalid as it deprives the indigent litigant of his Fifth Amendment right to a hearing. The Fifth Amendment right to a meaningful opportunity to be heard must be protected against denial by § 1915(e) as it operates to jeopardize it for indigents. *See e.g. Boddie v. Connecticut*, 401 U.S. 371, 379-380 (1971).

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

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from fraud by any person exercising the authority of the United States of America. *Boyce's Executors v. Grundy*, 28 U.S. 210, 220 (1830) ("the law ... abhors fraud."). *Fraus legibus invisissima*, "Fraud is most hateful to law." § 1915(e)

legalizes fraud permitting judicial officers to freely and openly practice fraud and intentionally, repeatedly, and systematically file false statements, writings, or documents in the courts to defraud or cheat the indigent of his property, or to obtain judgment of dismissal of his meritorious case. *See e.g. Sanchez v. California*, Civil Action No. 2:18-cv-06107-R (AFM) (twenty-one (21) false statements filed in the district court), Appeal No. 18-56153 (9th Cir. 2018) (two (2) false statements filed in the court of appeals).

The record shows that the district court judge Michael W. Fitzgerald filed eleven (11) false statements in the district court to defraud or cheat Petitioner of his property or to obtain judgment of dismissal of his meritorious case.[3] On the other hand, the court of appeals judges William C. Canby Jr., A. Wallace Tashima, and Morgan Christen filed two (2) false statements in the court of appeals to defraud or cheat Petitioner of his property or to obtain judgment of dismissal of his meritorious case.[4]

It is incontrovertibly clear that the judges of both courts practiced fraud through and through by intentionally, repeatedly, and systematically

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[3] The judge falsely stated: (1) that "Plaintiff ... filed a civil rights complaint ... pursuant to 42 U.S.C. § 1983," (2) that "District Judge Real and Magistrate Judge MacKinnon are entitled to judicial immunity," (3) that "The ... defendants are entitled to quasi-judicial immunity," (4) that "Defendants were entitled to judicial or quasi-judicial immunity," (5) that "No hearing is required for a motion for reconsideration," (6) that "Plaintiff's conclusory allegations are insufficient to overcome immunity," (7) that "the Court dismissed Plaintiff's complaint on the basis of defendants' immunity making no findings regarding frivolousness," (8) that "the Court has the authority to dismiss Plaintiff's complaint instead of authorizing service of process or otherwise proceeding with the action," (9) that "the Court was within its power to dismiss," (10) that "Plaintiff has not established that he should be entitled to relief," and (11) that "Plaintiff has not demonstrated entitlement to relief."

[4] The judges falsely stated: (1) that "this appeal is frivolous," and that "case ... is ... frivolous."

filling false statements, writings, or documents in the district court and court of appeals. Fraud is the product of the touch of Comus. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. This comparison is so graphic and so suggestive that the Supreme Court of India referred to it in *Behari v. State of U.P. & Ors.*, 11 S.C.R. 337, 350-351 (2000). In *Bivens*, the Supreme Court held that judges "are ultimate guardians of the liberties and welfare of the people." *Id.* at 407.

Here, the judges of both courts Michael W. Fitzgerald, William C. Canby Jr., A. Wallace Tashima, and Morgan Christen are ultimate fraudsters and sorcerers who menace and defraud the people of the liberties secured by the Constitution of the United States of America in violation of Petitioner's absolute right to be free from fraud. *Jus et fradem numquam cohabitant.* "Right and fraud never dwell together." And "Fraud avoids all judicial acts, ecclesiastical or temporal."

There is ample evidence in the record showing that the district court judge Michael W. Fitzgerald engaged in a calculated course of egregious misconduct involving dishonesty and subterfuge designed to perpetrate a fraud and avoid personal liability under *Bivens* in violation of fundamental maxims of common law, *Fraus est jus nunquam cohabitant*, "Fraud and justice never dwell together." *Fraus est celare fraudem*, "It is a fraud to conceal a fraud." *Qui fraudem fit frustra agit*, "He who commits fraud, acts in

vain."

It is well established law that there is no immunity from suit when the judge acted (a) outside his judicial capacity,[5] or (b) in clear absence of all

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[5] The record discloses that the deceased district court judge Manuel L. Real acted outside his judicial capacity. "[A] judge's absolute immunity does not extend to actions performed in a purely administrative capacity." *Clinton v. Jones*, 520 U.S. at 694-695 (quoting *Forrester v. White*, 484 U.S. 219, 229-230 (1988)). The judge's "effort to construct an immunity from suit for [administrative] acts grounded purely in the identity of his office is unsupported by precedent." *Clinton v. Jones*, 520 U.S. at 695.

In *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989), the court of appeals explained that the law "limited absolute judicial immunity to those acts which are truly judicial acts and are not simply administrative acts. ... This limitation is imposed even if the administrative function is essential to the legal system." *Id.*, at 465.

The decisions denying Petitioner *in forma pauperis* status are not themselves judicial or adjudicative; that is to say, that the order denying Petitioner *in forma pauperis* status is not an act of strict adjudication between the parties. The nature of this act is simply administrative. *See Ann. Rep.* (2011) *Advisory Letter* 18, p. 26 (A judge with administrative responsibilities adopted procedures for filings by *pro per* litigants that raised an appearance that the litigants received unequal treatment based on their indigency or lack of attorney).

"[S]imply because ... administrative authority has been delegated to the judiciary does not mean that acts pursuant to that authority are judicial. This proposition is equally true if the authority has been traditionally given to the courts. Prescribing a code of civil procedure ... may be done by the courts, but it could, without doubt, be done by the legislature. Thus ... while [the judge] may have had the authority to do what he did, that authority was not judicial authority. Rather, it was delegated administrative authority. ...

[J]udicial immunity does not apply. Any time an action taken by a judge is not an adjudication between parties, it is less likely that the act is a judicial one. [The judge's denial] was a general order, not connected to any [defendant]. ... This case differs from an adjudication in that ... the decision to ... [authorize the commencement of suit without prepayment of fees] ... is solely the role of the court. ... [T]he [judge's] order was an administrative, not judicial, act and ... absolute immunity does not apply." *Morrison v. Lipscomb*, 877 F.2d at 466.

As a matter of fact and law, the deceased district court judge Manuel L. Real's actions amounted to non-judicial acts stripping him of the absolute immunity presumptively available to him. In *Yates v. Hoffman Estates*, 209 F.Supp. 757, 759 (N.D.Ill. 1962), the district court specifically held that "not every action by a judge is in exercise of his judicial function. For example, it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse." Petitioner alleged that the judge knowingly and intentionally committed the torts of abuse of process, fraud, defamation-malicious libel, conversion, and civil extortion in the courthouse. *Compl.* ¶¶ 64-196, 218. Petitioner has made allegations, which, if true, could demonstrate that judge's actions are non-judicial under the authority of *Yates*.

In *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1304-1305 (9th Cir. 1989), the court of appeals explained that: "By contrast, we have not heretofore found allegations of theft and slander themselves to be judicial acts. ... Accordingly, we decline to hold that Guetschow is absolutely immune from allegations that he stole New Alaska's assets or slandered Cassity." (emphasis added). Petitioner alleged that the judge stole his honest services from his employer by filing an order with false statements of fact or law to extract a

jurisdiction.[6] *Stump v. Sparkman*, 435 U.S. 349, 357 (1978) (No immunity exists for a judge who acts in "clear absence of all jurisdiction" or in a "nonjudicial capacity").

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money payment and to put down or dismiss in a libelous way. *Compl.* ¶¶ 28, 93, 104, 168, 176, 179, 181, 193-194 212, 215. Petitioner has made allegations, which, if true, could demonstrate that judge's actions are non-judicial under the authority of *Guetchow*.

In *King v. Love*, 766 F.2d 962, 968 (6th Cir. 1985), the court of appeals held "that ... Judge Love ... deliberately misleading ... was a non-judicial act. ... Judge Love is not entitled to absolute judicial immunity." Petitioner alleged that the judge made intentionally false and misleading public statements. *Compl.* ¶¶ 35-36, 38-39, 40-42, 116. Petitioner has made allegations, which, if true, could demonstrate that judge's actions are non-judicial under the authority of *King v. Love*.

In *Harris v. Harvey*, 605 F.2d 330 (7th Cir. 1979), the court of appeals held "that Judge Harvey's actions concerning the plaintiff were racially motivated, that plaintiff was injured by such racially motivated acts ... [and] that the acts perpetrated [are] ... not ... a part of his judicial functions." Petitioner alleged that the judge's actions concerning him were racially motivated. *Compl.* ¶¶ 176, 203-204. Petitioner has made allegations, which, if true could demonstrate that judge's actions are non-judicial under the authority of *Harris*.

In *McCray v. Maryland*, 456 F.2d 1, 4 (4th Cir. 1972), the court of appeals explained that judges and clerks are "not immune for failure to perform ministerial act." Petitioner alleged that the defendants failed to perform ministerial duties or were acting in direct violation of their statutory duties. *Compl.* ¶¶ 189-192. Petitioner has made allegations, which, if true could demonstrate that the defendants' actions are not entitled to immunity under the authority of *McCray*.

[6] The record discloses that the deceased district court judge Manuel L. Real acted in "clear absence of all jurisdiction." Petitioner claimed that the judge never properly acquired jurisdiction over his case because he obtained judgment of dismissal directly through fraud. *Compl.* ¶¶ 94-173. *In re Canganelli*, 132 B.R. 369, 387 (N.D.Ind. 1991) ("[I]t is a general rule that fraud in obtaining a judgment destroys the jurisdiction of the court rendering such judgment."). And the judge possessed a personal bias against Petitioner and in favor of the Respondents rendering the judge wholly without jurisdiction. *Compl.* ¶¶ 89, 101-104. 28 U.S.C. § 455(a)(b)(1)(4); *Adoption of Richardson*, 251 Cal.App.2d 222, 235 (1967) ("personal bias or prejudice renders the judge unable to exercise his functions impartially in the particular case."). The judge was not authorized by law to hear the kind of case in which he acted; his actions were taken in "the clear absence of all jurisdiction."

In *Harmon v. Superior Court*, 307 F.2d at 798, the court of appeals explained that a failure "to state a claim upon which relief could be granted" is not the question before the district court. The district court "cannot know, without hearing the parties, whether it may be possible for appellant to state a claim entitling him to relief, however strongly it may incline to the belief that he cannot. ... [T]he district court had no jurisdiction to dismiss the case for failure to state a cause of action without hearing the plaintiff[]." (emphasis added) (quoting *Gutensohn v. Kansas City Southern Ry. Co.*, 140 F.2d 950, 953 (8th Cir. 1944).

Moreover, the decision granting the Respondents absolute immunity is contrary to the public policy expectation that there shall be a Rule of Law because the judge's actions taken in complete absence of all jurisdiction cannot be a judicial act. *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 80 U.S. 335 (1872). It is no more than the act of a private citizen, pretending to have judicial power which does not exist at all. "No judicial process,

The substance of Petitioner's "COMPLAINT" and legal papers presented sufficient facts and law showing that the defendants are not entitled to immunity from civil suit for their non-judicial acts or acts in clear absence of all jurisdiction. The district court intentionally overlooked these material points of fact and law to evade civil liability. *See generally* Dist. Ct. Dkt. Nos. 7, 9. § 1915(e) is obvious subterfuge to evade consideration of a *Bivens* claim and the requirements of Fed.R.Civ.P. 12(b), and avoid personal liability for deprivation of constitutional protected rights under color or pretext of federal law.[7]

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whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." *Ableman v. Booth*, 62 U.S. 506, 524 (1859).

[7] Petitioner established that the district court committed clear error by equating failure to state a claim with frivolousness. Dist. Ct. Mot. No. 8 at 7-9. In response to this, the judge concluded that "the Court dismissed Plaintiff's complaint on the basis of ... immunity, making no findings regarding frivolousness." Dist. Ct. Dkt. No. 9 at 4, L 5-7. This conclusion is erroneous because a dismissal of an action on the basis of immunity is in fact a finding of frivolousness. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

Furthermore, the judge applied wrong legal standard. Initially, the judge failed to provide the legal standard he used to dismiss Petitioner's "COMPLAINT" and was careful not use the language "fails to state a claim on which relief may be granted" and evaded the requirements of Fed.R.Civ.P. 12. *See* Dist. Ct. Dkt. No. 7. Namely, that "a complaint filed *in forma pauperis* which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) may nonetheless have an arguable basis in law **precluding dismissal** under § 1915." *Castillo v. Cook County Mail Room Dep't*, 990 F.2d 304, 306 (7th Cir. 1993) (emphasis added). And that the judge must accept as true "everything alleged in the complaint." *Young v. Kansas*, 890 F.Supp. 949, 951 (D. Kan. 1995); *Henriksen v. Bentley*, 644 F.2d 852, 854 (10th Cir. 1981) ("the allegations in Henriksen's complaint must be accepted as true.").

The record shows that the judge did not accept the truth of Petitioner's allegations; he stated "there are no ... allegations here." Dist. Ct. Dkt. No. 7 at 1, Par 3. In fact, the judge rejected everything alleged in the "COMPLAINT" and summarily dismissed the case, and when Petitioner claimed this error of law and requested reconsideration, the judge again rejected everything alleged in the "COMPLAINT" and ignored Rule 12(b)(6) and yet again evaded the purposes of Rule 12(b)(6). Specifically, the judge rejected the veracity of all well-pleaded facts in Petitioner's "COMPLAINT" and viewed both the facts and all reasonable inferences in false light most prejudicial to him; he strictly construed the "COMPLAINT" and did not consider the documents or information submitted to the district court in violation of Rule 12(b)(6).

Moreover, the decision is extremely unreasonable because the judge claims that he made "no findings regarding frivolousness" but cited § 1915(e) and used the language "failed to state a claim upon relief could be granted" in support of his dismissal decision. Dist. Ct. Dkt. No. 9 at 4, L 21, 26-27. This is without reason and fanciful. In addition, the fact that "the Court dismissed Plaintiff's complaint on the basis of ... immunity" does not change the fact that the judge equated failure to state a claim under Rule 12(b)(6) with the legal standard for frivolousness under § 1915(e) when he dismissed the "COMPLAINT." Accordingly, the judge's dismissal of Petitioner's "COMPLAINT" was clearly erroneous and extremely unreasonable, and constitutes subterfuge to perpetrate a fraud.

Significantly, the judge intentionally misapplied the Omnibus Consolidated Rescissions and Appropriations Act of 1996, 110 Stat. 1321 (OCRA) for resolving Petitioner's claim for reconsideration. Dist. Ct. Dkt. No. 9 at 4, L 19-20. The OCRA does not apply to *in forma pauperis* proceedings. The OCRA deals with salaries and expenses and not with indigent litigants appearing *in forma pauperis*. The Act of June 25, 1910, 6 Stat. 866, codified in 28 U.S.C. § 1915(a) provides proceedings for *in forma pauperis*. *See Johnson v. United States*, 352 U.S. 565 (1957).

In addition, the judge intentionally misinterpreted *Pulliam v. Allen*, 466 U.S. 522 (1984) to perpetrate a fraud. The courts ... are not bound by the interpretation put by an officer upon the law." *Hoffsomer v. Hayes*, 92 Okla. 32 (1923). The Supreme Court already considered the judge's policy argument in *Pulliam* itself, concluding that there is no need to shield judges (state or federal) from injunctive relief stating: "We never have had a rule of absolute judicial immunity from prospective injunctive relief." *Pulliam* at 536. *In re Justices of Supreme Court*, 695 F.2d 17, 25 (1st Cir. 1982) ("The Justices' argument that they are simply immune from suit for injunctive or declaratory relief is wrong."); *United States v. Yakima Tribal Court*, 806 F.2d 853, 861 (9th Cir. 1986) ("The district court enjoined Judge Ward from enforcing the ... orders he had entered."); *Affeldt v. Carr*, 628 F.Supp. 1097, 1102 (N.D. Ohio 1985) ("As stated earlier, 'judicial immunity is not a bar to prospective relief against a judicial officer acting in her judicial capacity.'"); *Neville v. Dearie*, 745 F.Supp. 99, 102 (N.S.N.Y. 1990) ("absolute immunity does not extend to actions seeking injunctive relief concerning judges."); *Henriksen v. Bentley*, 644 F.2d at 856 ("equitable relief may ... be obtained."); *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 735 (1980) ("we have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts."); *Richardson v. Koshiba*, 693 F.2d 911, 914 n. 8 (9th Cir. 1982) ("Judicial immunity does not extend to suits for injunctive relief."); *Shipp v. Todd*, 568 F.2d 133, 134 (9th Cir. 1978) ("quasi-judicial immunity ... does not extend to suits for injunctive relief."); *Slavin v. Curry*, 574 F.2d 1256, 1264 (5th Cir. 1978) ("Judge Lindsey is ... not ... immune from an action for equitable relief."); C. WRIGHT, THE LAW OF THE FEDERAL COURTS § 47, at 277-86 (4th ed. 1983) (prohibitory relief); Nahomd, *Damages and Injunctive Relief Under Section 1983*, 16 URB. L. REV. 201-16 (1984) (criteria for granting injunctive relief); *Lipsett v. University of P.R.*, 576 F.Supp. 1217, 1223 (D.P.R. 1983) ("the relief requested against the higher echelon federal defendants ... may pertain solely to an injunctive decree, ... then the complaint against these officers as representatives of the federal agency may be plausible in view of the waiver of sovereign immunity."); *Bell v. Hood*, 327 U.S. 678, 684 (1946) ("it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual ... officers from doing what the ... Amendment forbids the [government] to do."); *Philadelphia Co. v. Stimson*, 223 U.S. 605, 619-620 (1912) ("in case of an injury threatened by his illegal action, the [federal] officer cannot claim immunity from injunction process.").

It should be noted that the Federal Courts Improvement Act of 1996 (Pub. L. No. 104-317, 110 Stat. 3847) ("FCI") violates the constitutional supremacy. "The State of California is an inseparable part of the United States Constitution, and the United States

Constitution is the supreme law of the land." CAL. CONST. Art. III, § 1. "A ... class of citizens may not be granted privileges or immunities." CAL. CONST. Art. I, § 7(b). The FCI grants judicial officers immunity or privilege to violate the rights of Citizens unfortunate enough to find themselves in a biased, corrupt, or irresponsible court and creates an oligarchy (a form of government in which a few persons hold ruling power) as it totally insulates judges from personal responsibility for their actions, and allows a small number of judges to escape the consequences of unlawful or unconstitutional behavior.

Next, the Bill of Rights provides: "in order to prevent misconstruction or abuse of its powers, that ... Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances, [and that] [n]o person shall ... be deprived of life, liberty, or property, without due process of law." The FCI evidences that Congress misconstrued or abused its power by defying the first article and making FCI abridging the right of the people to petition the government for a redress of grievances in violation of the Bill of Rights. *Alshafie v. Lallande*, 171 Cal.App.4th 421, 429 (2009) (A Pub. L. cannot be used to deny an indigent party his fundamental right of access to the courts, "access trumps comfort."). Under the FCI a victim can be forced to bear the full burden of a serious irreparable injury inflicted by a judge. The immunity doctrine is inconsistent with the Bill of Rights and Supremacy Clause. Even if the doctrine had existed in common law, constitutional supremacy dictates that it must bow before the American idea of procedural justice embodied in the guarantee of Fifth Amendment Due Process. *Immunity Under 42 U.S.C. § 1983: A Benefit to the Public?*, 12 CONN. L. REV. 116, 136 (1979) (Court's grant of immunity condones judicial corruption and works injustice on innocent parties); Rosenberg, Stump v. Sparkman: *The Doctrine of Judicial Impunity*, 64 VA. L. REV. 833, 836 (1978) (Court's grant of judicial immunity allows judicial lawlessness); *Judicial Immunity: Developments in Federal Law*, 33 BAYLOR L. REV. 351, 355 (1981) (Court's holding in *Stump* opened door to broad abuse by judiciary); Block, Stump v. Sparkman *and the History of Judicial Immunity*, 1980 DUKE L.J. 879, 880 (holding in *Stump* calls into question integrity of judiciary and judicial process); Feldthusen, *Judicial Immunity: In Search of an Appropriate Limiting Formula*, 29 U.N.B. LJ. 73, 105 (1980) (urging greater tort liability for judges); *Judicial Immunity*: Stump v. Sparkman, 47 UMKC L. REV. 81, 90-91 (1978) (questioning whether there are any limitations on judge's actions in court of general jurisdiction after *Stump*); *Liability of Judicial Officers Under Section 1983*, 79 YALE LJ. 322 (1969) (arguing that judicial officers should be subject to liability under § 1983 under actual malice standard); Laycock, *Civil Rights and Civil Liberties*, 54 CHI.-KRR L. REV. 390, 399-400 (1977) (Court's holding in *Stump* demonstrates unfairness of subject matter jurisdiction rule).

Next, the FCI implicates another branch of the government; the FCI interferes with judiciary's ability to function in violation of the doctrine of separation-of-powers.

Next, the FCI violates the Declaration of Independence (US 1877) because FCI adopted the doctrine of immunity which "is the very doctrine out of which the rebellion was hatched." *Congressional Globe*, 39th Cong., 1st sess. 1680, 1758 (Rep. Trumbull) (1866). And the doctrine is unnecessary and destructive. Nagel, *Judicial Immunity and Sovereignty*, 6 HASTINGS CONST. L.Q. 237, 239 (1978) (special status of judiciary is unnecessary and destructive).

Even more, in *Ex parte Virginia*, 100 U.S. 339, 347 (1879) it was held that "neither ... executive, legislative, nor judicial actors shall deny equal protection of laws to any person within state jurisdiction." The FCI denies the Citizen access to the courts on account of his indigency, race, religion, or exercise of the right of self-representation in violation of the equal protection of the laws.

Finally, the judge misunderstood the law regarding immunity; he "has confused [sovereign] immunity with personal immunity. ... The personal immunities are entirely distinct from [sovereign] immunity." *Russ v. Uppah*, 972 F.2d 300, 302-303 (10th Cir. 1992)

Evidently "the district court, [ignored] both the nature of [Petitioner's] right to judicial process for the recovery of his property and the potential seriousness of the burden the [*in forma pauperis* dismissal of meritorious legal claims] places on that right. The defendants seem to interpret the provision of a judicial process for the recovery of property a favor that the government grants its citizens, rather than a right to which they are entitled. In other words, the [government] has free rein to decide if and when it will allow citizens to obtain judicial orders to recover their property.

This view is contrary to both the avowed principles and the spirit of the American polity. It is a prime tenet of our American political philosophy that government has a responsibility to protect the lives, liberties, and property of its citizens, and part of that responsibility includes the provision of courts where individual citizens can seek the vindication of their rights.[8] [Petitioner] has the right to go to court to recover his property; it is not a

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(quoting *Hafer v. Melo*, 502 U.S. 21 (1991)). A judge as a federal actor is not vested with the sovereign immunity granted to the Nation itself. *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1350 (9th Cir. 1981). As discussed before "court judges and clerks sued in their official capacities in civil rights action are not entitled to claim any personal immunities, such as judicial, quasi-judicial or qualified immunity." Dist. Ct. Mot. No. 8 at 6-7.

[8] The legislative or supreme authority cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is bound to dispense justice and to decide the rights of the subject by promulgated, standing laws, and known authorized judges. *J. Locke, The Second Treatise of Civil Government*, Chap. X, § 136 (T. Cook ed. 1947) (6th ed. 1764). This principle was expressed in our Declaration of Independence, which states that, in order to secure the unalienable rights of all citizens, among which are life, liberty, and the pursuit of happiness, "Governments are instituted among Men" and "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it . . ." The necessity of judicial process for the establishment of just government is demonstrated by the inclusion among the "long train of abuses" compelling the separation of the American Colonies from Great Britain of the contention that the King of Great Britain "obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers."

privilege that can be granted or denied [to] him at the government's whim. It is this right to vindicate one's rights in court that is the heart of the constitutional right to due process of law. ...

This principle is expressed in one of the original sources of the theory of constitutionalism, the Magna Carta. Section 40 of that document states that among the duties government owes to its subjects is that 'To no one will we sell, to no one will we refuse or delay, right or justice.' This principle is also expressed in the Supreme Court's holding that the *due process clause* ... prevents [government] from 'denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed rights.'

Thus, any [government] attempt to limit the right of individuals to go to court to have their rights vindicated is a matter of serious import. ... [I]t is doubtful that it could simply choose to close [the courts to an indigent on the ground of nonpayment of a fee], forestalling all attempts by citizens to enforce their legal rights. There is a plausible argument that [§ 1915(e)] is not a reasonable regulation of the judicial system but is rather a deprivation of the putative litigant's right to due process. This argument applies with particular force to this case because the clerk of the court allegedly refused to process [Petitioner's] request ... making the alleged deprivation of due process even more inexcusable. ... [T]his [dismissive action] ... excluded only a particular class of cases from the courts, a class brought by an unpopular

group in our society, [indigents]. If [Petitioner], who is [indigent], had been excluded from the courts because he is [indigent], there would be no doubt that his rights to equal protection and due process under the [fifth] amendment were violated. These rights are not relinquished because he is [an indigent]. *Morrison v. Lipscomb*, 877 F.2d at 467-468 (citations omitted).

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

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from the practice of law by United States officers. *See* 28 U.S.C. §§ 454, 955; *United States v. Bosch*, 951 F.2d 1546, 1551 n. 1 (9th Cir. 1991) ("outlawing the practice of law by judges, magistrates, and court clerks respectively."); *Audett v. United States*, 265 F.2d 837, 840 (9th Cir. 1959) ("Congress ... prohibit[ed] the practice of law by ... judges of the courts ... or court clerks.").

§ 1915(e) permits judicial officers to figuratively speaking, step down from the bench and assume the role of advocate for the defendants in the action. And in that role to exceed the proper bounds of advocacy and file *sua sponte* order dismissing the case. "[I]t is not the proper function of the district court to assume the role of advocate for ... litigant." *Young v. Kansas*, 890 F.Supp. at 951; *Paulson v. Evander*, 633 So.2d 540 (1994) ("the judge on his own amended and redrafted pleadings."); *In re Inquiry Concerning a Judge, Gridley*, 417 So.2d 950 (1982) ("Judge Gridley, with full knowledge that he had no jurisdiction to do so, entered a sua sponte order.")

§ 1915(e) authorizes judicial officers to prepare, draft, and file a motion to dismiss for the defendants for either "failure to state a claim" or "immunity" and summarily dismiss the indigent's case. Motions to dismiss of that nature are appropriate before the district court by the defendants and not the judge, magistrate, or court clerk. *See e.g. Gonzalez v. City of Chicago*, 888 F.Supp. 887 (N.D.Ill 1995) (Attorney for the defendants Susan S. Sher and several other attorneys filed motion to dismiss); *see also Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997) (motion to dismiss filed by attorney for the defendant).

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

§ 1915(e) allows judicial officers to be players rather than umpires and file motions to dismiss for the defendants. "Judges should be umpires rather than players." *Rose v. Superior Court*, 81 Cal.App.4th 564, 570 (2000)

(5) Violation of Fifth Amendment Right to a Trial by a Judge Who is Not Biased Against Him

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

§ 1915(e) permits a judge who has a personal bias against the indigent party to sit and act in his case and make egregiously erroneous rulings that display a deep-seated favoritism towards the defendants and antagonism toward the indigent party. "[B]ias exists. ... [T]he courts ... are biased against the self-represented. ... The lawyer bias against the self-represented. ... [T]he bias against the self-represented that pervades [the] courts." *Bias Against Pro Per Litigants; What It Is. How to Stop It.*, by Stephen Elias (April 4, 1997) Nolo Press. § 1915(e) authorizes the judge to issue a ruling on his own motion based entirely on personal knowledge of the defendants creating the

appearance of favoritism. *Ann. Rept.* (2003) *Advisory Letter* 12, p. 27. Additionally or alternatively, § 1915(e) authorizes the judge to go forward with a motion hearing in the absence of self-represented litigant creating the appearance of antagonism. *Ann. Rept.* (2005) *Advisory Letter* 1, p. 26.

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

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from attempted extortion under color of official right. *See* 18 U.S.C. § 1951. § 1915(e) authorizes judicial officers to demand, charge, or extract money payment from the indigent litigant on the false ground that it is due to him as a court fee, in that the judicial officers on the false ground that the action or appeal is frivolous or that the indigent's conduct warrants sanctions attempted to extract money from him for court fees. *See e.g. McCormick v. United States*, 500 U.S. 257, 279 (1991) ("[E]xtortion 'under color of official right,' and ... the defendant, a justice of the peace, had extracted a payment from a litigant on the false ground that it was due him as a court fee.")

(7) Violation of Fifth Amendment Right to Equal Protection

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

Instead of being subjected to the same rules as non-indigents, indigents who would otherwise qualify for *in forma pauperis* status must pay the filing fees. Access to the court is a fundamental right that remains with an individual even after impoverishment. Petitioner's claim that he suffered a violation of his health freedom is precisely the type of fundamental rights claim for which the federal court vigilantly guarded an indigent's access to the courts.

§ 1915(e) affects a fundamental right. § 1915(e) stops only indigents from filing civil cases. Those litigants who have money to pay for filing fees can file many frivolous lawsuits as they can afford. Under § 1915(e) indigents eventually have to pay the filing fee. Stopping all lawsuits under § 1915(e) by indigents would bar important and arguably meritorious constitutional claims. § 1915(e) does nothing to reduce the frivolous filings of non-indigent litigants; they may file as many frivolous filings as they wish under § 1915(e). The provision is too broad in that it may bar non-frivolous actions of indigent litigants. If an indigent files an action or appeal using *in forma pauperis* status and all are dismissed as frivolous, then he is barred without regard to the merits of his case, unless he pays the filing fee. § 1915(e) makes no provision for the merits of an indigent litigant's filings; it does not even grant courts the discretion to hear claims that are clearly meritorious. § 1915(e) is unconstitutional under the equal protection component of the Fifth Amendment's Due Process Clause. *See e.g. Ayers v. Norris*, 43 F.Supp.2d 1039 (1999).

(8) Violation of Seventh Amendment Right to Trial by Jury

§ 1915(e) violates Petitioner's Seventh Amendment right to trial by jury because it denies him the benefit of a trial of the fact issues before a jury. § 1915(e) nullifies the Seventh Amendment right to trial by jury in civil suit amounting to tyranny. *See Declaration of Independence* (US 1776), par. 20 ("For depriving us in many cases, of the benefits of trial by jury."). § 1915(e) "frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a factfinding process for the resolution of disputed facts." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992)

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

§ 1915(e) violates Petitioner's Ninth Amendment right to the truth in evidence because it excludes any and all relevant oral and documentary evidence in civil proceedings. § 1915(e) precludes the indigent litigant from presenting evidence on his claims.

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

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

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

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

The language in § 1915(e) authorizes judicial officers to dismiss the indigent's meritorious "COMPLAINT" on the ground of "lack of subject-matter jurisdiction," a ground which is not articulated or detailed in § 1915(e), or on the ground of "fails to state a claim on which relief may be granted," a ground which is articulated or detailed in Fed. R. Civ. P. 12(b)(6), or on the ground of "immune from such relief," a ground which includes "official immunity," "sovereign immunity," "absolute immunity," "legislative

immunity," "judicial immunity," "quasi-judicial immunity," "qualified immunity," "personal immunity," "common-law immunity," and "judge-made immunity," or on the ground of "frivolous" allowing judicial officers to apply the incorrect legal standard when addressing the question of frivolous, jurisdiction, or immunity for the purpose of slavery.

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

§ 1915(e) violates U.S. CONST. Art. III, § 2 because it strips or withdraws the United States courts of jurisdiction over those cases that fall under 28 U.S.C. §§ 1291, 1331, 1343(a)(1)(3), and 1367(a). § 1915(e) limits the jurisdiction of the United States courts.

Federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given them and have no right to decline the exercise of that jurisdiction. *See Ayers v. Norris*, 43 F.Supp.2d 1039. § 1915(e) permits judicial officers to decline the exercise of jurisdiction which is explicitly given. The "procedural" statute § 1915 for the granting or denying of *in forma pauperis* is not jurisdictional. *Cf. Kontrick v. Ryan*, 540 U.S. 443, 454 (2004). § 1915(e) delineates what cases district courts are competent to adjudicate in direct violation of Petitioner's Article III right to a hearing on the merits of a claim over which the court has jurisdiction.

CONCLUSION

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

Date: May 7, 2020

Respectfully submitted,

By: _____
IMMANUEL F. SANCHEZ
Petitioner *in pro se*