

No. 19-8652

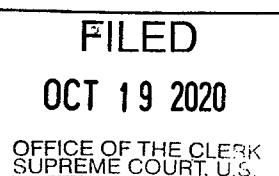
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

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 REHEARING

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PETITION FOR REHEARING

Petitioner Mr. Immanuel F. Sanchez respectfully asks this Court to grant rehearing of this Court's October 5, 2020 order, pursuant to Rule 44 of this Court.

ARGUMENT

I. VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Pursuant to the Fifth Amendment of the Constitution of the United States of America, "No person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. As a substantive limitation on government action, the Due Process Clause precludes arbitrary or capricious decision making. *See Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government."); *see also Dent v. West Virginia*, 129 U.S. 114, 123 (1889) ("the terms 'due process of law' was ... designed to secure the subject against the arbitrary action of the [government] and place him under the protection of the law.").

The record shows that the Court acted arbitrarily and capriciously when it made its decision to deny Petitioner's writ of *certiorari* because it completely failed to state its reasons in writing. For this reason, the Court's decision denying Petitioner's writ of *certiorari* constitutes an absolute abuse of discretion in violation of the Fifth Amendment Due Process Clause.

Indeed, the Court provided a summary or conclusory statement that does not detail or analyze the reasons for its decision. In fact, the Court's decision does not set forth any reasons upon which it relied in reaching its conclusion. Petitioner is

presented with a summary or conclusory statement, that “[t]he petition for a writ of certiorari is denied.” The Court did not detail or analyze the reasons upon which this decision was based. No statement was made by the Court as to the reasons for its conclusion; the Court did not identify any evidence or facts it relied on in making its decision to deny Petitioner’s writ of *certiorari*.

Evidently, the Court’s decision provides no rational explanation, inexplicably departs from clearly established precedent, is devoid of any reasoning, and contains only a summary or conclusory statement. Clearly, the action or decision of the Court was arbitrary and capricious in violation of the Fifth Amendment to the Constitution of the United States of America under *Wolff v. McDonnell* and *Dent v. West Virginia*.

II. VIOLATION OF CANON 1 OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

Canon 1 declares: "A Judge Should Uphold the Integrity and Independence of the Judiciary." The accompanying text adds: "An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."

The judges' decision to deny Petitioner's writ of *certiorari* manifested an intentional disregard of his fundamental constitutional rights, namely, the First Amendment right to petition, the Fifth Amendment right to due process of law, the Seventh Amendment right to trial by jury, the Ninth Amendment right to the truth in evidence, the Eleventh Amendment right to commence suit in law and equity against one of the United States for unconstitutional policy, and the Thirteenth Amendment right to be free from slavery or involuntary servitude in violation of Canon 1 of the Code of Conduct for United States Judges.

No more fragile rights exist under the Constitution of the United States of America than the rights of the Citizen. Consequently these rights are deserving of the greatest judicial solicitude. The ideal of the American legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if people clothed with judicial power may ignore the Citizen's fundamental constitutional rights merely because he is indigent. Justice requires that judges be solicitous of rights of Citizens who come before the court.

Moreover, the judges' bad faith is directed towards the legal system itself; their arbitrary denial of Petitioner's writ of *certiorari* because of their personal beliefs as to his case and their personal hostility to him for lack of attorney smacks of an inquisitorial intent to serve imagined truth at the expense of justice contrary to Canon 1 of the Code of Conduct for United States Judges.

III. VIOLATION OF PETITIONER'S RIGHT TO *CERTIORARI* REVIEW

“An abuse of judicial discretion has always been, and always ought to be, the subject of review in some form. When on the undisputed facts the court exceeds its discretion, or takes action contrary to its mandatory duty, the party aggrieved, in the absence of other adequate remedy, is entitled to annulment on the statutory writ of certiorari.” *State v. District Court of Jefferson County*, 213 Iowa 822, 831-32 (1931).

It is well established that “the dismissal of Petitioner’s *in forma pauperis* complaint was an absolute abuse of discretion.” *See* Cert. Petition, Ground I. The abuse of discretion gave Petitioner right to *certiorari* review. *Denton v. Hernandez*, 504 U.S. 25 (1992) (“The Court granted the writ of certiorari and overturned the appellate court’s decision.”); *Neitzke v. Williams*, 490 U.S. 319 (1989) (“On certiorari to review a case in which a Federal District Court denied a plaintiff leave to proceed in *forma pauperis* based on a finding that the complaint was frivolous.”); *Boag v. MacDougall*, 454 U.S. 364 (1982) (“Granting certiorari, the United States Supreme Court reversed.”); *Coppedge v. United States*, 369 U.S. 438 (1962) (“On certiorari, the United States Supreme Court vacated the judgment of the Court of Appeals and remanded the case to that court.”); *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331 (1948) (“Plaintiff petitioned this Court for a writ of certiorari and moved for leave to appeal in *forma pauperis*. … [T]his Court entered an order assigning the motion for argument … and stating that it desired ‘to hear argument upon the questions presented by the motion for leave to proceed in *forma pauperis*.’”).

The judges acted illegally in denying the application and Petitioner is entitled under the statute to a writ of *certiorari*. *See* 28 U.S.C. § 1254(1). Under § 1254(1), “Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil ... case ... after rendition of judgment.”

Petitioner has a “right ... to the common law prerogative writ of certiorari for the removal of all proceedings pending in an inferior court under the constitutional power and duty in this Court to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.” *Id.*, at 836. The judges’ decision denying *certiorari* review of Petitioner’s case violated his right to the common law prerogative writ of *certiorari* under *State v. District Court of Jefferson County*, *Denton v. Hernandez*, *Neitzke v. Williams*, *Boag v. MacDougall*, *Coppedge v. United States*, and *Adkins v. E. I. DuPont de Nemours & Co.*

IV. FRAUD

By virtue of Petitioner's American citizenship relationship with the United States of America, the judges owed him a fiduciary duty to declare an act of Congress unconstitutional and void when it appears that it is not pursuant to and within the limits of power assigned to the Federal Government. As the Constitution is the fundamental and supreme law, when any act of Congress is brought before the judges, it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress.

Every public office is created in the interest and for the benefit of the people, and belongs to them. Thus, a public office is a public agency or trust which extends to all matters within the range of the duties pertaining to the legislative, executive, or judicial office. *See AmJur 2d, Public Officers and Employees § 3.* Therefore, a fiduciary relationship exists between Petitioner and the United States judges under the Constitution and laws of the United States of America. The "Constitution ... is the supreme Law of the Land; and the Judges ... shall be bound thereby." *See U.S. CONST. art. VI, § 2.* The record discloses that the judges took advantage of their position of trust to the hurt of Petitioner.

Petitioner has already demonstrated that 28 U.S.C. § 1915(e) is unconstitutional, but the judges failed and refused to declare it unconstitutional and have breached their fiduciary duty amounting to an injury and a usurpation of judicial power. The judges attempted to enforce § 1915(e) thereby deprived Petitioner of his clearly established constitutional and statutory rights under color

of government authority. *See e.g. Davis v. Passman*, 442 U.S. 228 (1979); *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971); *Bloem v. Unknown Dep't of the Interior Employees*, 920 F.Supp.2d 154 (D.D.C. 2013); *Hart v. Gaioni*, 354 F.Supp.2d 1127 (C.D.Cal. 2005); and *Ayers v. Norris*, 43 F.Supp.2d 1039 (E.D.Ark. 1999).

“The attempt of a [judicial] officer to enforce an unconstitutional statute is a proceeding without authority.” *Ex parte Young*, 209 U.S. 123, 159-60 (1908). The orders issued pursuant to § 1915(e) violated the First, Fifth, Seventh, Ninth, Eleventh, and Thirteenth Amendments and are void. *Cf. WXYZ, Inc. v. Hand*, 463 F.Supp. 1070 (E.D. Mich. 1979). As applied to Petitioner, § 1915(e) was and is “irrational and arbitrary,” permitting denial of his meritorious petition for a writ of *certiorari* for the purpose of vexing, harassing, oppressing, discriminating, persecuting, and intentionally harming him.

By breaching their fiduciary duty owed to Petitioner, the judges committed “constructive fraud” when they denied his petition for a writ of *certiorari*. The judges’ decision to deny *certiorari* was the product of fraud and cannot be allowed to stand. “[T]he law … abhors fraud.” *Boyce’s Executors v. Grundy*, 28 U.S. 210, 220 (1830). “Fraud is most hateful to law,” *Fraus legibus invisissima*.

It is well-established that fraud is conduct which vitiates every transaction known to the law. *See* 37 AmJur2d, Section 8; *Nudd v. Burrows*, 91 U.S. 426, 440 (1875) (“Fraud destroys the validity of every thing into which it enters. It affects fatally even the most solemn judgments and decrees.”); *United States v.*

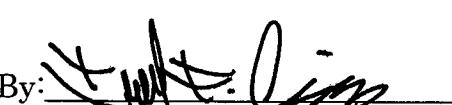
Throckmorton, 98 U.S. 61, 66 (1878) (“Fraud vitiates ... a judgment ... obtained directly by fraud.”). In *Behari v. State of U.P. & Ors.*, 11 S.C.R. 337 (2000), “Lord Denning observed ... ‘No judgement of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.’ In the same judgment Lord Parker LJ observed that fraud ‘vitiates all transactions known to the law of however high degree of solemnity.’”

CONCLUSION

Petitioner respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Date: October 16, 2020

Respectfully submitted,

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