IN THE SUPREME COURT OF THE UNITED STATES

No. 19A _____

JOHN D. DOE, APPLICANT

v.

NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, et al

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, John D. Doe respectfully requests a 60-day extension of time, to and including April 18 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The judgment of the court of appeals (App., infra, 1) is unreported, and was entered on November 20, 2019. Unless extended, the time for filing a petition for a writ of certiorari will expire on February 18, 2020[1]. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. This request for extension is made necessary by the January 2020 discovery of shocking, stunning and complex new facts, directly relevant

---

[1] Applicant relied upon the Rutter Practice Guide for Federal Ninth Circuit Appellate Practice, which did not mention this application should have been filed 10 days prior to the date the petition was due. The *pro se* Appellant only learned of this when he checked the Rules to ensure his formatting was correct, and requests this late application be accepted.

to a petition for rehearing in the court of appeal, as well as any petition for a writ of certiorari in this Court. A need to complete an analysis of these newly discovered facts has necessitated two extensions of time to file a petition for rehearing in the court of appeal (App, infra, A8 – A15), as well as a petition for a third extension of time to file a motion for reconsideration, until March 20 2020, which was filed in the court of appeal on February 14, 2020 (App, infra, A16 – A18). That petition is now pending a ruling from that court.

2. Although such extensions are highly unusual for a case such as this, they are absolutely necessary and justified in light of the shocking, stunning and severe nature, complexity and seriousness of the recently discovered new facts in question. The implications of these new facts are so seriously grave that it is of the highest importance they be fully and accurately analyzed, understood and confirmed, before any statements or accusations based upon them are made in the public record of any court. To do otherwise would be grotesquely irresponsible, as the statements and accusations implied by the Applicant's analyses thus far are likely to inflict devastating and irreversible damage, the severity of which cannot be overstated. Such consequences are unjustifiable, in the event a complete analysis of these facts ultimately shows such statements and accusations to be unfounded.

3. The Applicant's ability to present a writ of certiorari to this Court, responsibly raising the issues revealed by these new facts, as well as

this Court's capacity to assess and weigh those issues, depends upon his completing his analyses, as well as the court of appeal's response to the motion for reconsideration that will be filed thereafter. There is no way the Applicant could have learned of these voluminous and complex new facts earlier than he did, and these new facts are not plainly understood. Rather, they require investigation, inquiry and deduction to uncover their true and full meaning. Applicant generally knows what the end picture of these facts looks like, but the picture still remains out of focus in many key areas. Each inquiry results in new discoveries that bring the picture into sharper focus, but also reveals a need for further inquiries that were previously unknown.

4. Extension by this Court is needed to ensure the extraordinarily serious issues revealed by these new facts can, if necessary, be submitted to this Court via certiorari. Applicant cannot overstate the importance of getting his analysis right, and not making statements or accusations prematurely, before all the facts are both known, and confirmed to be accurate.

Procedural History in the Court of Appeal

5. The Court of Appeals denied Applicant John D. Doe the period of time and Due Process proscribed under the Rules to prepare and present his points on appeal, before allegedly conducting a screening under 28 U.S.C. § 1915(e)(2) using an improper standard, and then dismissing his putative appeal on November 20 2019 as allegedly frivolous. 28 U.S.C. § 1915(e)(2) requires a court to dismiss a case "at any time if the court determines that

the action or appeal is frivolous or malicious." However, while Congress clearly intended this statute to grant a court discretion, the requirement that the court make a "determination" inherently implies the court is required to apply the accepted test of frivolity to the points raised in the case in question. Thus, it logically follows that Congress did not intend the "at any time" provision to permit arbitrary dismissals, without first affording the litigant the basic procedural Due Process of an opportunity to properly place all of their points before the court prior to the determination process.

6. Appellant can find no opinion from this Court updating the test for frivolity since the 1996 passage of the Prison Litigation Reform Act. Instead, this Court has continued to cite the non-frivolity test set forth in *Anders v. State of Cal.*, 386 U.S. 738 (1967) and *Neitzke v. Williams*, 490 U.S. 319 (1989). That test is whether one point has an arguable basis in fact and law. The test does not extend to inquire as to whether any of those points will ultimately be successful on appeal, or whether the points are "serious."

7. Since even a single non-frivolous point will permit an appeal to survive this test, it is clearly important to afford an appellant the due process of an equal opportunity to present all of their points on appeal *before* subjecting those points to screening for dismissal under 28 U.S.C. § 1915(e)(2).

8. In a district court case, the operative document fully putting forth the points is the Complaint, which is part of the initial filing. In an

appeal, however, the document fully putting forth the points is the Appellant's Opening Brief ... not the notice of appeal, nor an application to proceed *in forma pauperis*. This Court has previously spoken disapprovingly of the dangers and inherent shortcomings of courts of appeal conducting 'appeal-light' hearings to determine if an appellant will be allowed to file an opening brief, based solely upon an application to proceed *in forma pauperis*. *See Coppedge v. U.S.*, 369 U.S. 438, 456 (1962).

9. Under Federal Rules of Appellate Procedure Rule 31(a), appellants are permitted 40 days to prepare and file their opening brief. Ninth Circuit Rule 31–2 further provides for an automatic 30 day extension of this period, for a total of 70 days. This 70 day period was not arbitrarily arrived at. Rather, the Rules establishing this period were crafted by the Judicial Conference of the United States and the Judicial Council of the Ninth Circuit, as a product of consensus amongst sitting judges and practicing attorneys. 70 days thus represents the consensus opinion of the period of time an experienced appellate attorney requires to properly prepare a brief putting forth their points on appeal. In so doing, an experienced appellate attorney has the benefit of both a record and a transcript to cite to.

10. Here, the Court of Appeal issued an order to John on July 15, 2019, suspending his right to even file an opening brief, record or transcript, and ordering him to instead "file a statement explaining why the appeal is

not frivolous and should go forward" within 35 days - just **half** of the 70 day period he should have been afforded (App, infra, A2 – A3).

11. It makes no Due Process sense to suspend the Rules, deprive an unexperienced novice pro se litigant of the 70 day period deemed necessary for experienced appellate attorney to put forth their points on appeal, and instead demand the novice pro se perform the same task in *half* the time – just 35 days – without the benefit of either a record or a transcript to cite to. Indeed, in interpreting another portion of the PRLA, this Court noted it had "explained that courts should generally not depart from the usual practice under the Federal Rules." *Jones v. Bock*, 549 U.S. 199, 212 (2007). Instead, deviations "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.* at 217, citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S., at 168 (1993).

12. Furthermore, the Court of Appeal's order illogically placed the procedural due process cart before the horse. The operative document of an appeal, setting forth the points on appeal, is the Appellant's Opening Brief. Here, the Court of Appeal ordered a novice indigent pro se appellant to file a statement explaining why an opening brief, which had not yet been written or filed, was not frivolous. This was a logical fallacy that made no sense.

13. The Court of Appeals appears to have then applied an improper standard in screening John's statement for frivolity under 28 U.S.C. §1915(e)(2). The July 15 2019 order was accompanied by a fill-in-the-blank

response form, which essentially took the form of an opening brief (App, infra, A4 - A7). Question Number 4 on the form, however, reads "Why are these errors serious enough that this appeal should go forward?" (App, A7). Whether a point on appeal will be successful, or whether it is "serious," is not part of the accepted test of non-frivolity set forth in either *Anders* or *Neitzke*. Thus, not only did the Ninth Circuit Court of Appeals deprive John of the ordinary Due Process and 70 days of time he was entitled to under the Rules to properly present every point he wished to raise on appeal, before screening those points for frivolity for purposes of dismissal under 28 U.S.C. §1915(e)(2), it appears to have applied an improper standard for doing so.

Factual and Procedural History in the District Court

14. Applicant John D. Doe was a 4.0 GPA college honors student who was suddenly and summarily deprived, without any Due Process or just cause, of his Property and Liberty interests in his previously-approved mental disability accommodations and educational reputation, by employees of North Orange County Community College District, a California public entity. The evidence suggests the initial deprivation of John's approved accommodations was an intentional act of retaliation, and North Orange County's own investigative report into these deprivations concluded, "probable cause does exist to demonstrate unlawful discrimination occurred." These deprivations, which started in October 2014, and are ongoing to this day, have left John inconsolably suicidal, because he is now burdened by an

permanent, official yet inaccurate State government record (his transcripts reflecting North Orange County's discrimination) which will forever malign his academic abilities, character and intelligence, and permanently deprive him of his fundamental Liberty interest in being able to pursue the academic, career and personal opportunities and goals, essential to John's Freedom to attempt to shape the course of his own life, in pursuit of happiness.

15. In the underlying action, John substantively pled both Due Process and Equal Protection claims, pursuant to 42 U.S.C. § 1983 (which were instead titled as simply an Equal Protection claim), and sought, amongst other things, both injunctive relief and monetary damages under "Section 504 of the Rehabilitation Act," and the "Americans with Disabilities Act" (without specifying the Title thereof). While crude, John's complaint established both elements of the deliberate indifference test: (1) that the Defendants were on notice that he required accommodation for his disabilities, and that (2) they failed to act upon that knowledge, in a manner that was more than mere negligence, and had an element of deliberateness.

16. Ruling on five motions to dismiss brought by various Defendants, the District Court held (amongst other errors) that John could not plead a cause of action under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act, unless he also showed the Defendant's deprivations without Due Process of John's disability accommodations had been motivated by discriminatory animus against

John's disability. Explaining its dismissal of John's ADA and Rehabilitation Act claims, the District Court wrote that John had not "sufficiently allege[d] that Defendants intentionally took those actions because of Plaintiff's disability" (District Court Docket Item 49, pg. 12:23-24).

17. The District Court then ordered that if John wanted to file an amended complaint, John was required to "set forth specific facts indicating Defendant's intention to deny Plaintiff his requested accommodations by reason of, or because of, his disability." (*Id.* pg. 12:5-6).

18. As a threshold issue, the District Court's order was clearly legally erroneous, as it altered the established deliberate indifference standard of intent in ADA and Rehabilitation Act cases, transforming it into a discriminatory animus standard. This Court and most Circuits – including the Ninth - have rejected that standard in Rehabilitation Act and ADA cases.

19. More seriously however, it was functionally impossible for John to comply with the District Court's order, because he had no facts available at the time to satisfy the District Court's requirement, which could be "set forth" in the manner required by the new pleading standards of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

20. As a result, John was unable to file an amended complaint before the one single 30-day window of "leave" to do so closed. The District Court thereafter never provided John with another opportunity to amend his

complaint, even after John repeatedly asked for additional leave, and described amendments he wanted to make to his Due Process claims.

21. After obstructing John's ability to amend his complaint, and denying multiple requests for additional leave to amend, the District Court dismissed John's action for failure to prosecute. The District Court then denied John's application for leave to proceed *in forma pauperis* on appeal, which properly cited these and other legal errors as points he wished to raise.

22. The Court of Appeal then cited the District Court's denial of John's IFP application as its sole reason for issuing its July 15 2019 order subjecting John to screening under 28 U.S.C. § 1915(e)(2). There is no evidence to indicate Congress intended its 1996 PRLA reforms to permit a district court's certification an appeal is not taken in good faith, for purposes of determining whether an appellant will have to pay fees per § 1915(a)(3), to be used by a court of appeal as a basis to presume frivolity, for purposes of issuing an OSC or dismissing an appeal entirely, under § 1915(e)(2).

For the foregoing reasons, the applicant respectfully a 60-day extension of time, to and including April 18 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

February 18, 2020

/s/ John D. Doe

Applicant in Pro Se