No. 20-1052

In the Supreme Court of the United States

In Re Christopher Gary Baylor,

ON EMERGENCY PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES EIGHTH CIRCUIT COURT OF APPEALS

EMERGENCY PETITION FOR A WRIT OF MANDAMUS

Against A Fatherless America
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QUESTION PRESENTED

In this satellite litigation challenging conduct by State officials acting under color of law, it is well established that this Court may review, including when the subsequent act which is challenged has dire consequences due to the court's inability to conduct appeals in accordance with reasonable procedural rules, "extraordinary". This Court authorized itself in *Neitzke*, holding that "close questions of federal law, including claims filed pursuant to 42 U.S.C. § 1983, dismiss[ed] for failure to state a claim. . . have been substantial enough to warrant this Court's granting review. . . to resolve them". Even though this Court separately authorized review under Certiorari, no adequate means other than by mandamus exists to compel the appellate court to provide Petitioner with a meaningful appeal. If ignored here, Due Process is forever lost. The question presented here is:

Does a non-prisoner, indigent, *pro se* litigant to a Section 1983 claim who initially proceeds *In Forma Pauperis* but later pays for his appeal, lose the same right of access to court procedures, the same rights as represented parties, the right to be heard on appeal by submission of *brief*, merely because dismissal by the district court was made pursuant to 28 U.S.C. § 1915(e)(2)(b), which negates the adversarial process, allows the court to act as an advocate for absent defendants, leaving only one party to a case and appeal — equate to a lack of Due Process, Equal Protection and chilling of Free Speech?

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EMERGENCY PETITION FOR A WRIT OF MANDAMUS

In relation to U.S. Sup. No. 20-756, Christopher Gary Baylor, the only party to this case, respectfully petitions this Court for an emergency writ of mandamus to U.S. Ct. App. No. 20-3685, for review of the United States Court of Appeals Eighth Circuit common practice and policy, which deprives indigent pro se litigants of the Due Process right to file a brief on appeal.

DECISION BELOW

No opinion has been made in this case. The written letter from the clerk of the court, Michael E. Gans, in the United States Court of Appeals for the Eighth Circuit, is unreported (App., *infra*, 1).

JURISDICTION

The written letter of the United States Court of Appeals Eighth Circuit was entered on December 28, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1651.

STATUTORY PROVISION INVOLVED

Section 1651, Title 28, of the U.S. Code provides:

(a) "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Section 2071, Title 28, of the U.S. Code provides:

(a) "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business."

STATEMENT

In the United States, the phrase "adversary system" is synonymous with the American system for the administration of justice — a system that was constitutionalized by the Framers and that has been elaborated by the Supreme Court for two centuries. But the adversary system represents far more than a simple model for resolving disputes, rather, it consists of a core of basic rights that recognize and protect the dignity of the individual in a free society, rights that include Due Process and Equal Protection of the laws. Although, in the continued existence of unrestrained power are court decisions that overlap constitutional standards of law, which makes the administration of justice impossible when the necessary ingredients of justice are substantially withheld from indigent *pro se* litigants, thus rendering their ability to assert any constitutional rights unprotected, such as in this case.

In the state of Minnesota, this has been the literal case for more than (3) three years, where Petitioner has unsuccessfully used every avenue open to him in an effort to obtain a prevailing judgment on the merits to prove the State's conduct and judgments unlawful. Denied all remedies, relief or redress in the State court, Petitioner is denied the same in the United States District Court in the same State. Now, Petitioner is deprived of Due Process and Equal Protection on appeal in the United States Court of Appeals Eight Circuit. Here, Petitioner's right to *brief* the court is comported with overlapping decisions — and the requirements of common practice that only recognize parties represented by counsel. In addition to the more than (100) one-hundred denials by the courts in the state of Minnesota, *now* includes the Petitioner's constitutional claims made within a federal system said to be determined in major part, by

the same civil libertarian values said to be embodied in the Constitution. But this broad and fundamental concept that no person may be deprived of life, liberty, freedom, happiness or property without Due Process of law, U.S. Const. Art. IV, § I — is a concept itself substantially equated with the adversary system, but promises nothing at any stage of litigation, especially on appeal.

Under Eighth Circuit's unconstitutional practice, court can decide on appeal in a way that is arbitrary with respect to the issues involved, reciting a rule only used by Eighth Circuit, wherein taking such an arbitrary approach, Eighth Circuit merely "*review[s] the original file of the district court*" to determine the merits of a case, See e.g. Schmid v. United Bhd. of Carpenters & Joiners, 827 F.2d 384, 386 (8th Cir.1987)(per curiam); Jett v. South Dakota Human Services Center, 867 F. 2d 1145, (8th Cir. 1989); Nelson v United States, 868 F. 3d 636 (8th Cir. 2017).

Notwithstanding the court's common practice — is an act that abdicates the main form of persuasion on appeal, that is, the written appellate brief — where both parties support or advance their positions with reference to applicable case law and statutes. But in this case and others, it is restricted. In cases like *Griffin* and *Douglas*, Due Process concerns were involved because the courts set up a system of appeal as of right but refused to offer a fair opportunity to obtain an adjudication on the merits of each appeal. Equal protection concerns were involved because the court treated a class of persons differently — such as in this case, where Eighth Circuit deprives *pro se* indigents of "adequate, effective, and meaningful" access to appellate court procedures.

The arguable nature of Petitioner's claims is in fact based upon precedent relied upon by the United States Supreme Court, nonetheless, since Petitioner is indigent and his action was commenced under IFP, according to Eighth Circuit common practice, indigent *pro se* litigants are deprived of a fair appeal for the purpose of denying a meaningful appeal. These concerns were implicated in the *Griffin*[1] and *Douglas*[2] cases where both Clauses (Due Process and Equal Protection), supported the decisions reached by this Court, that constitutional rights on appeal are explicitly recognized by this Court.

But this petition goes beyond those analysis to now examine how the constitutional right to procedural safeguards on appeal has become hindered by the overlapping practices and decisions by Eighth Circuit, adversely affecting Petitioner's fundamental rights in a civil case that requires disposition on the merits. In the civil context, this Court for example has been willing to consider both "[m]odern practice" and "common-law practice" in its due process analysis, and has applied the *Mathews v. Eldridge*[3] balancing test for determining "what process is due" when applying "additional or substitute procedural safeguards". The fundamental importance of fairness here should ensure private interests, by which appellate error correction protects — in addition to the risk of erroneous deprivation of life, liberty, or property — which are protected by the Constitution — but are now without process, and — court is now in error itself when examining Eighth Circuit's common practices and application of overlapping doctrinal

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[1] *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (plurality opinion).
[2] *Douglas v. California*, 372 U.S. 353, 355–56 (1963).
[3] 424 U.S. 319 (1976).

framework, contrary to *Neitzke*[4].

Because on one hand, Eighth Circuit holds it is necessary to go beyond the bare requirements of pleading and includes the procedural Due Process safeguard of *service before dismissal.* Although on the other hand, Eighth Circuit's inconsistent application of this doctrine paralyzes the adversarial process and Equal Protection jurisprudence — which effectively creates the right to a meaningful appeal for indigent and/or civil non-prisoner *pro se* litigants.

With regard to the affects on appellate review, in the (3) three aforementioned cases [5] for example, Eighth Circuit explicitly states that an Appellant's "*appeal is being considered on the original file of the district court*". In two of those cases where Appellant's themselves were not represented, firstly in *Jett,* it is unclear as to whether the Appellant was given meaningful access to court procedures to file a *brief* — secondly in *Schmid,* Appellant did file a brief, but it was obviously not considered since the court gave no opinion on the matter other than the recitation of a commonly used boilerpoint statement. Nonetheless, in the case of *Nelson,* the clerk of the court was directed to establish a briefing schedule on the account both parties were represented by counsel on appeal. Thus the risk of erroneous deprivation of life, liberty, or property without a consistent process — only tips the balance of a favorable decision and the recognition of Equal Protection or a constitutional Due Process right to a meaningful appeal — but only in cases where parties are represented by counsel. Due to the court's

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[4] *Neitzke v. Williams,* 490 U.S. 319, 325 (1989).

[5] *Schmid v. United Bhd. of Carpenters & Joiners,* 827 F.2d 384, 386 (8th Cir.1987)(per curiam); *Jett v. South Dakota Human Services Center,* 867 F. 2d 1145, (8th Cir. 1989); *Nelson v United States,* 868 F. 3d 636 (8th Cir. 2017).

inconsistent nature for (3) three decades, Petitioner is fearful and remains without any persuasive power to compel any unconstitutional Eighth Circuit court, let alone an unconstitutional Eighth Circuit Appellate Court to first accept, or even make a decision based upon a brief he currently has no right to submit.

In light of the surrounding circumstances where Petitioner has been denied any and all procedural, statutory or constitutional relief for more than (3) three years in dozens of actions on more than (100) one-hundred occasions in Eighth Circuit courts, it is clear that *pro se* rights, especially for a non-resident indigent, are limited, or rather none. Eighth Circuit's doctrine and common practice defined by the presence of legal counsel, expresses no other degree of right or deference or guidance to any appellate doctrine or procedure or practice that is consistent with Due Process, or Equal Protection of appellate rights for ALL Appellants.

Therefore the United States Supreme Court should assess whether an inconsistent practice ranks as fundamental and brings together the substantive and procedural strands of the Due Process and Equal Protection Clause; or whether both of the strands, at their core, are merely subject to the restrictions of unfair practices by the Eighth Circuit placed against *pro se* indigent litigants by the arbitrary application of government power. Numerous decisions by Eighth Circuit are not only in conflict with its own holdings but with other Circuit decisions, which overlap the Due Process and Equal Protection Clause of the Constitution, contrary to this Court's own holding in *Neitzke* — which Eighth Circuit relies upon.

REASONS FOR GRANTING THE PETITION

Despite their legal obligation to do so, the United States Court of Appeals Eighth Circuit have veered onto unconstitutional grounds by consistently dismissing *pro se* litigant appeals based on "*the court consider[ing] the case on the original file of the district court*". In the way District Court argues, the appellate court merely exercises managerial power behind a facade of deliberation that disavowals any such right consistent with this Court's holdings or any Eighth Circuit decisions that have developed constitutional doctrines related to the adversarial or appellate process. Nonetheless, the Due Process right to a meaningful appeal, applied in a managerial sense rather than ministerial, deprives an indigent *pro se* litigant of showing that his case has hidden merit beyond what was shown in the record.

For (3) three decades, Eighth Circuit has avoided facilitating a common practice or decision nearer to recognizing the fundamental importance of appellate remedies protected by the Constitution. The time to protect life and liberty and therefore necessitate the ingredients of Equal Protection and Due Process of law, is now.

A. Eighth Circuit perceives a conflict between ordinary practice and notice pleading, but inconsistently applies foreign doctrines and common practice that overlap its own decisions, other Circuit decisions, and United States Supreme Court precedent.

According to the United States District Court in the state of Minnesota:

> "It appears that the Eighth Circuit has not directly addressed the question of whether § 1915(e)(2)(B)(ii) authorizes dismissal of a case brought by a non-prisoner litigant seeking in forma pauperis status for failure to state a claim. . . . . Though unpublished, in light of the absence of any binding Eighth Circuit authority to the contrary, [unpublished] decisions favor the conclusion that § 1915(e)(2)(B)(ii) applies to cases brought by prisoners and non-prisoners alike. [internal citations omitted]." Fnl. Odr., Pg.13,¶2,ECF. No.13.

The District Court in the state of Minnesota goes on to cite nearly several cases, where it ultimately relies upon a case held by 2nd Circuit, which has no binding effect on the case at bar. Nonetheless, Eighth Circuit itself has consistently held the District Court to a Due Process standard under Porter v. Fox, 99 F.3d 271, 273-74 (8th Cir. 1996)(stating that "all post-*Neitzke* decisions have uniformly held that a district court may not dismiss prior to service of process, unless the complaint is frivolous.) In *Porter*, which formulates Eighth Circuit's constitutional standard — was subsequently relied upon by the United States District Court in the state of Minnesota in Johnson v. Bloomington Police, 193 F. Supp. 3d 1020 (D. Minn. 2016)(where court declined to extend Section 1915 to non-prisoner cases), cited by Minnesota and Iowa courts in the Eighth Circuit. Notwithstanding, that decision pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), recognized *Neitzke* and "observ[ed] that the Supreme Court of the United States has distinguished claims that are frivolous from claims that fail to state a claim." This additional safeguarding by Due Process is equally supported by Smith v. Boyd, 945 F.2d 1041, 1043 (8th Cir. 1991), where Eighth Circuit established a "two prong" exception for *sua sponte* dismissals, providing that (1) failure to state a claim, must (2) not precede service of process. But obviously the Minnesota District Court in Petitioner's case

failed to consider the overriding importance of Equal Protection or Due Process, Constitutional protections which support this Court's holding and Due Process analysis of the adversarial system in *Neitzke*.

The District Court in Petitioner's case ignores (3) three decades of what has consistently been held as a Constitutional safeguard, and the court is influenced by unpersuasive reasons and unpublished opinions including a single non-binding decision from 2nd Circuit, which overlaps Eighth Circuit's own binding doctrine and United States Supreme Court precedent. Due to the inconsistent nature in which Eighth Circuit applies its own doctrine, it subjugates *pro se* litigants, and — a larger group, such as non-residents, indigents, non-prisoners, protected-class citizens and males, to the discriminating managerial power of the Eighth Circuit Appellate Court, ensuring that viable claims are eliminated in an expeditious manner, not only at the pleading stage under Section 1915 reserved for prisoners only, but also by common summary practices used by Eighth Circuit court, enforced by a single boilerpoint statement which defines an indigent *pro se* party's legal rights, forever.

Therefore review of this case by the United States Supreme Court is valuable at this stage not only to certain classes and groups, but especially individuals like Petitioner who already finds after (3) three years of exhausting litigation, all court views are merely influenced by concerns for docket control. But it is not a plausible defense in a case where Petitioner's constitutional claims have an arguable basis and "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L.Ed.2d 80 (1957).

In this case, because the Petitioner as Appellant in this case can prove facts which entitle him to relief, he, like parties represented by legal counsel, should be equally recognized to harness the expressive power of the constitutional amendment "free speech", and it should be important that appellate review by brief be guaranteed to all *pro se*, indigent, non-resident and male litigants, requiring the appellate court to decide appeals based on the submission of a *principle brief*, instead of allowing Eighth Circuit to simply decide the merits of a case by reciting a commonly used boilerpoint statement to quickly dispense of indigent *pro se* litigant appeals when "*the court considers the case on the original file of the district court*" and "*affirms*". Formalizing procedural requirements through constitutionalization will give added force to the adversarial and procedural system rooted in Due Process, Equal Protection and First Amendment rights. It would serve the duty of the United States Supreme Court to compel Eighth Circuit to release a briefing schedule in recognition of indigent *pro se* rights to be heard on appeal, by government, for obvious grievances caused by the misconduct of government officials.

Especially when Petitioner's constitutional claims obviously have merit and are not frivolous. Even though District Court could not address the underlying complex issues in Petitioner's objections, those same issues should not be excluded on appeal, because lack of a factually identical case is not dispositive in this matter. "The Supreme Court has made it clear that there need not be a case with "materially" or "fundamentally" similar facts in order for a reasonable person to know that his or her conduct would violate the constitution.'" Nelson, 583 F.3d at 531 (quoting Young v. Selk, 508 F.3d 868, 875

(8th Cir. 2007)). Rather, "in the light of pre-existing law[,] the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987). The Supreme Court has observed, "'[t]here has never been . . . a [§] 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages.'" Heartland Acad. Cmty. Church v. Waddle, 595 F.3d 798, 810 (8th Cir. 2010)(quoting Lanier, 520 U.S. at 271, 117 S. Ct. 1219).

The Petitioner raised the important question of the *judicial nature* of a proceeding, but District Court prematurely foreclosed on the Petitioner's arguments with an axiomatic assertion of immunity based on *judicial character*. Now aided by Eighth Circuit, Petitioner is denied of the right to be heard in a way that deprives constitutional rights. This Court held in *Boddie*[6], "due process requires, at a minimum, that absent a countervailing interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Because this case is inextricably intertwined with United States Supreme Court case No. 20-756, which argues that the State court's judgments obtained by fraud, without proper service or trial, are void, unlawful and unconstitutional orders that colorfully terminate Petitioner's parental rights through a decree that dissolves a common-law marriage, recognized by State's law as void, "*rights and duty*" are implicated in this case. This Court has said in *Loughran*, "the validity of a marriage is determined by the law of the place where contracted, 20 CFR 404.725(a)".[7]

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[6] Boddie v. Connecticut, 401 U. S. 371 (1971)

[7] *Loughran*, 292 U.S. 216, 20 CFR 404.725(a)

Therefore, lack of Due Process and Equal Protection in this case would likewise, answer the question as to whether the United States Supreme Court condones the unconstitutional conduct of the Eighth Circuit Appellate Court, Eighth Circuit U.S. District Court, and Eighth Circuit State court, which ultimately dictates whether a non-resident indigent *pro se* litigant has any constitutional rights, at all.

B. Mandamus Is Appropriate Under The Circumstances.

Courts have found that "[a] duty is discretionary if the government actor is required to exercise his or her judgment or discretion in performing the duty." On the other hand, "a duty is ministerial and not discretionary if it is imposed by law and its performance is not dependent on the employee's judgment."

In *Gaubert*[8], this Court provided a two-part inquiry to guide the application of the discretionary function exception, but that exception does not apply here since firstly, the Pennsylvania Court in *Bengal* raises the constitutional mandate for filing a brief, requiring no discretion, and has said by quoting this Court:

> "In many cases, and in this case particularly. . . [t]he only opportunity that the law requires be afforded the appellant to plead his case to the very people who will decide it. . . is by brief. [I]t [is] quite clear that the opportunity to file briefs is not only a statutory requirement but, in the alternative, a constitutional due process requirement."[internal citations omitted][9]

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[8] *United States v. Gaubert*, 499 U.S. 315, 322-323 (1991)

[9] *Bengal and Youngwood Pharmacy v. State Board of Pharmacy*, 2 Pa. Commw. 347, 349, 279 A.2d 374, 375 (1971) quoting *Morgan v. U.S.*, 298 U.S. 468, 481 (1936)("Argument may be oral or written.").

In addition to this Court's recognition that the filing of a *brief* is a "*statutory and constitutional due process requirement*", includes local rules and policies, also ministerial. Fourth Circuit for example, plainly states in its local rules without difference as to whether a litigant is *pro se*, indigent or represented by counsel:

> "The court sets the briefing schedule when the record is complete and sends notice to the parties of the dates the briefs are to be filed. See Loc. R. 10(a) & 31(b)"[10]

However, Eighth Circuit's common practice asserts with discriminating indifference in its "*Internal Operating Procedures*", separate rules for unrepresented parties under "*Record on Appeal, Civil Cases, Pro Se Appeals*", stating:

> "The court will review pro se appeals on the original file of the district court. In practice, the court and its staff use PACER to access the district court's original file." p.13, G(2)(a).[11]

In practice, Eighth Circuit's general policy is unconstitutional, and generally, discretionary acts are immune while ministerial acts are not. Because the issuance of a mandamus in this case will not control discretion, rather compel the court to perform its constitutional duty, the ministerial tasks that do not control an employee or official's discretion because they are predetermined by policy, would nonetheless require intervention of the Judicial Conference or United States Supreme Court. 28 U.S.C §2071(a).

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[10] https://www.ca4.uscourts.gov/AppellateProcedureGuide/Briefing/APG-formalbriefing.html; https://www.ca4.uscourts.gov/AppellateProcedureGuide/Briefing/APG-formalbriefing.pdf

[11] https://ecf.ca8.uscourts.gov/newrules/coa/iops06-19update.pdf

Absent review by mandamus, the District Court's final judgment will effectively become unreviewable, which cannot be undone, thus deprives Petitioner of access to court, the opportunity to be heard and free speech. The Pennsylvania State court recognized this Due Process requirement as an important ingredient to effectuate a "meaningful appeal", before the term "meaningful appeal" ever existed. The equal need for Equal Protection is especially when Petitioner has no other adequate means of protecting his fundamentally important rights that have been colorfully denied by Minnesota State and Federal courts — and Eighth Circuit Appellate Court, which holds an office in the state of Minnesota, city of Saint Paul.

Intervention is needed in this case, but outside the Eighth Circuit, that is, the supervisory powers of the United States Supreme Court are required to help develop the application of a new principle or policy under Eighth Circuit's *Internal Operating Procedures*, and harmonize the law having nationwide impact on unrepresented, non-residents, indigents, protected-class citizens, non-prisoners, including pro se litigants, and in finality, would clarify a question that is likely to recur unless resolved by this Court.

Therefore mandamus review is warranted in this extraordinary, unique, special and unusual case, as the circumstances alone implicate several principles addressed in *Neitzke* — thus requires that the Petitioner be allowed to file a brief as a matter of law and of right, to the Eighth Circuit Appellate Court when:

(1) "meritorious legal theories whose ultimate failure is not apparent at the outset";

(2) "there exists close questions of federal law, including claims filed pursuant to 42 U.S.C. § 1983. . . substantial enough to warrant this Court's granting review";

(3) "review here will guarantee consonant with Congress' overarching goal in enacting the in forma pauperis statute: "to assure equality of consideration for all litigants";

****(4) "crystalliz[ing] the pertinent issues [will] facilitate [certiorari] review of court dismissal by creating a more complete record of the case";

****(5) "review involves procedural protections";

(6) "according opportunities. . . to indigent litigants commensurate to the opportunities accorded similarly situated paying plaintiffs", and;

****(7) a brief "is necessary for a *pro se* plaintiff to clarify his legal theories.".

quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Absent relief, Petitioner would be substantially prejudiced and incur irreparable injury and irrevocable harm if the United States Supreme Court declines to review this matter.

CONCLUSION

The United States Supreme Court and the Pennsylvania state court recognize the constitutional Due Process right to file a *brief* on appeal, and that right, should, for Petitioner, be explicitly recognized by Eighth Circuit as a matter law or as of right. Otherwise, the Petitioner, who has been denied every procedural, statutory or constitutional right in the same State for more than (3) three years on more than (100) occasions, simply, has no rights.

I pray to God Almighty that He will restore what is unlawfully taken, but ask this Court for a righteous decision, in this case. *Amen*, *Amen* and *Amen*.

Respectfully Submitted,

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