

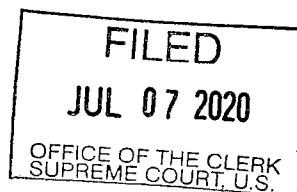
No. 20-5096

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Shavez Evans
(Your Name)

— PETITIONER



vs.

~~XXXXXXXXXX~~

John Rea et al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF

Mandamus
~~certiorari~~

United States Court of Appeals For the 9th Cir
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shavez Evans
(Your Name)

P.O. Box 3200
(Address)

Florence, AZ 85132
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Did the District Court of Arizona deny the petitioner Evans justice, [Equal Protection] when abusing their discretion ruling Judges are absolutely immune from § 1983 suits for damages when the petitioner Evans motioned the court to amend compliant to raise a Declaratory Judgment- Injunction? [5th and 14th amendment violations]
- 2) Did the District Court of Arizona deny the petitioner Evans justice, [Equal Protection] when abusing their discretion under Rule 15(a) [of the Federal Rules of Civil Procedure]; the rule states that a leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded? [5th and 14th Amendment violations]
- 3) Did the Maricopa County Superior court in CRA016-123034 deny the petitioner Evans justice when placing the petitioner in involuntary servitude, by denying bail categorically? ~~category~~ (see Appendix D) [5th and 14th Amendment violations]
- 4) Did the District Court of Arizona deny the petitioner Evans justice [Equal Protection] when using *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973) to deny the 42 § 1983 as a remedy when challenging "liberty" denied by involuntary servitude? [5th and 14th Amendment violations]
- 5) Did the District Court of Arizona's decision to rule against the petitioner Evans, refusing to "liberally" construe the petition, and or Did the District Courts of Arizona's decision to rule against the petitioner without determining if in "fact" the petitioner was held against his will, beyond the scope of notice, cause Evans to not be able to enjoy justice and "liberty" concerning the right to enjoy "property" without interference by government regulation. [5th and 14th amendment violations] and 1st Amendment]

Question(s) Presented Cont.

- 6) Did the District Court of Arizona ruling of dismissal without an opportunity to amend cause Evans to not receive justice [equal protection], under well settled law of the United States Supreme Court, concerning the test in Salerno, specifically the third prong in the Bail Reform Act wasn't applied?
[5th and 14th Amendment violations]
- 7) Did the District Court of Arizona, and Ninth Circuit Court of appeals prove for a appropriate governmental interest suitable further by the differential treatment of Evans compared to Lopez-Valenzuela v. Arpaio? (see Appendix C)
[5th and 14th Amendment violations]
- 8) Was the Bail Reform Act, an declaratory decree violated by the Superior Court of Maricopa County, an exception allowing for action to be brought against a judicial officer, under 42 U.S.C. §1983
[5th and 14th Amendment violations]

LIST OF PARTIES

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

John C. Rea

Erin O'Brien Otis

Nicholaus Podsiadlik

RELATED CASES

United States v. Salerno, 481 U.S. 739 (1987)

Gerstein v. Pugh, 420 U.S. 103, 107-08; 119 (1975)

Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)

Foman v. Davis, 371 U.S. 178, 182 (1962)

Police Dept v. Mosley, 408 U.S. 92, 95, 92 S. Ct 2286, 2290 (1972).

County of Maricopa, Arizona, et al, v. Angel Lopez-valenzuela, et al (2015) United States Supreme Court

Lopez-Valenzuela v. Arpaio, 770 F. 3d 772, 775 (2014)

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Report No. 104-360, at 36-37 (1996)	2c

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at No. 19-16257; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☒ reported at No. CV-19-60709-PHX-DWL (JZB); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 23, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), 28 U.S.C. § 1651; 42 § U.S.C. 1983

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Jurisdiction

Pursuant to Natural Justice; the 5th and 14th Amendments of the U.S. Constitution [Due Process Clause]; EQUAL PROTECTION clause; 42 § 1983 and 28 U.S.C. § 1651, this Extraordinary Writ/ Writ of Mandamus is in need of aid of the Court's appellate jurisdiction, considering the exceptional circumstances that warrants this court's discretionary powers, as adequate relief cannot be obtained in any other form or from any other court.

~~Pretrial Detention~~ Jurisdiction Cont

The supreme court held that Preiser does not bar a §1983 claim where an inmate seeks an injunction to require a hearing to determine whether there was probable cause for pretrial detention. Gerstein v. Pugh, 420 U.S. 103, 107-08 (1975). The court stated that a successful claim by Gerstein would not lead to vacation of his conviction, Id. at 119. Judge should "freely give leave when justice requires;" Rule 15(a)(2)

In Greenholtz v. Inmates of the Nebraska penal and habeas remedies ~~and~~ ^{have} addressed the merits of a §1983 claim which challenged the constitutionality of a state's parole-release determinations procedures; Woratzek v. Arizona Bd. of executive clemency, 117 F. 3d 400, 403 (9th cir. 1997).

With the Law stated above petitioner Evans has met merits for grounds existing under purpose for Rehearing En Banc.

Considering the courts necessity to secure or maintain uniformity of the Courts decision specifically under Mayer v. Gagne, 448 U.S. 122, 129 n11 (1980) (Federal district courts have original jurisdiction over §1983 claims only when substantive rights allegedly violated is secured by constitution or Federal statute providing for civil Rights; Pulliam v. Allen, 466 U.S. 522, 541-44 (1984) judicial immunity not bar to prospective injunction against judge who imposed bail on individuals charged with nonjailable offenses superceded by statutes in part Federal Courts Improvement Act

Pub. L. NO. 104-317, 110 Stat. 3847 (1996) section 309(A) interpreting this legislation the senate judiciary committee explained that these provisions are designed only to reverse Pulliam, and not to grant immunity for conduct clearly excess of a judges discretion, even if the conduct is taken in the judge's judicial capacity. See report NO. 104-346, at 36-37 (1996).

Evans claim under 42 U.S.C. § 1983 was not construed liberally. A "complaint filed by a pro se prisoner must be held to less stringent standards than formal pleadings drafted by lawyers" *Id* (quoting *Brickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

The Ninth circuit court of Appeals had the opportunity to pull the record of the state court to verify if in fact that a Adversarial ^{hearing} arbitrarily denied or not in addition to acknowledging the fact that both Olajoye and Evans can bring a claim against commissioner Julie Ann Mata held ~~as~~ ^{as} non-bondable categorically specifically Evans on 05/31/2016 under CR2016-123024-09 DT in the Superior Court of Arizona Maricopa County in the Not Guilty Arraignment at 10:42 am (see Electronic file 06/06/2016 8:08 am) of Michael K. Jeanes, clerk of court. This evidence proves that there is merit for the District court to maintain consistency under uniformity of the courts decisions specifically under *Lopez-Valeznuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014).

This proceeding involves a question of exceptional importance as Evans the petitioner challenges the facial constitutionality of § 13-3961(A)(3) and the corresponding

provisions of the Arizona constitution, Article 2, section 22
(A)(1). petitioner Evans has already stated by Law that
the substantive due process violation challenge is
unconstitutional in all of its Applications, under U.S. v.
Salerno, 481 U.S. 739 (1987), Simpson v. Miller (Simpson II);
241 Ariz. 341 (2017); state ex rel. Montgomery v. Wein, 244
Ariz. 42 (2018); Lopez-vardenzuela v. Arpaio, 770 F.3d 772
(9th Cir. 2014) as this opinion ^{given} ~~given~~ by this court con-
tradicts the existing opinions by other cases in this
court and cases of the Supreme Court as there is
an overriding need for national uniformity.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 § 1983

Civil Rights Act of 1866

Ariz. Const. Art II, §22 - and -

A.R.S. § 13-3961 (A)(3)

Federal Rules of Crim. Procedure, Rule 46 (a)(i)

Bail Reform Act 1984

Judiciary Act of 1789

5th, 14th amendments of US Const.

13th Amendment of U.S Const.

The Bill of Rights [incorporated]

Due Process clause

Equal Protection clause

Arizona Proposition 103

Rule 15(a) of the Fed. Rules of Civil Pro.

STATEMENT OF THE CASE

On August 9th 2016, in the superior court of Arizona Maricopa County Comm. Erin O'Brien Otis vacated the Evidentiary hearing / Bail hearing denying the petitioner the guaranteed right of liberty. The petitioner did not enjoy the fundamental guarantees of a full adversarial hearing [the 3rd prong in Salerno] put in place by the Senate Judiciary Committee, under the Bail Reform Act. Denial of this basic fundamental right denied the petitioner the right to be free from unconstitutional ~~involuntary servitude~~ ~~involuntary servitude~~, abolished by the 13th amendment.

On June 19th, 2019, in the U.S. District Court of Arizona, the petitioners' claim of a violation of substantive due process, stated above was denied. The petitioner did not enjoy the right to bring an action against a judicial officer for an act or omission taken in the officer's judicial capacity. The petitioner Evans was denied an injunction / declaratory relief caused by the District Court's ruling. The court did not consider the validity of the claim, instead the court denied the 42 S. 1983, citing absolute immunity.

On ~~June~~ ^{March} 10th, 2020, in the U.S. court of appeals [9th Cir.], the petitioners' claim was dismissed. Commissioner O'Brien was cited as barred by judicial immunity. The U.S. court of appeals did not rule according to judicial immunity exceptions.

Statement of the Case Continued

On February 4, 2019, Plaintiff Shavez Evans, who is confined in the Arizona State Prison Complex - Elman in Florence, Arizona, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983. On May 10, 2019 Evans filed a motion to ~~amend~~^{amend} Complaint.

The court dismissed the complaint and the action denying the motion to amend Complaint claiming the amendment would be futile and the District Court denied as moot the request for a Writ of Injunction, Motion to Consolidate, and supplemental Motion of Writ of Injunction.

The District Court in Olawale Olaoye v. Kris Lehman, NO. CV-19-04794-PHX-SRB (JEM) the court determined that a pleading could be cured by the allegation of other facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal of the action under Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (En Banc). Olaoye complaint was dismissed for failure to state a claim, but Olaoye was allowed by the District Court to amend because the District Court believed it may be a possibility to amend to state a claim, therefore the court dismissed it with leave to amend.

Equally Evans and Olaoye stated claims of violations of substantive due process contending violations of the Civil Rights Act, the Bail Reform Act, Judiciary Act, Supremacy Clause and Rule 46(a)(1) of the Federal Rules of Criminal Procedure in violation of the 13th Amendment challenging punishment before conviction, the only remedy available to a person being held in state custody who has been denied substantive

due process under 42 U.S.C. § 1983.

Although both Evans and Olaoje petitioned the court for the same substantive due process violations against a judge who does not have an immunity from unconstitutional behavior when facts are sufficient to grant party Declaratory or Injunctive relief against a judge; Olaoje was the only petitioner out of the two that was allowed to amend his petition of the same substantive due process violation, a fundamental guaranteed right. Roller v. Gunn, 107 F. 3d 227, 233 (4th Cir.) (No Equal protection violation since Filing fee requirement does not target suspect class, does not burden fundamental rights, and satisfies rational basis standard), cert. denied 118 S. Ct 192 (1997); Madrid v. Gomez, 150 F.3d 1030, 1041 (9th Cir 1998)

Evans and Olaoje both are challenging the involuntary servitude prior to trial which both parties are entitled to seek redress when a person/judicial officer acting under color of state law deprives an individual party a declaratory decree, a Act of Congress, such as the Bail Reform Act, The Judiciary Act, The Supremacy Clause, The Due Process Clause, The Civil Rights Act, exclusively applicable to the District of Columbia, a statute of the District of Columbia. In re Bayside Prison Litigation, 190 F. Supp. 2d 755, 760-61 (D. N. J. 2002) (Finding complaint sufficiently pled § 1985 (3); Griffin v. Breckenridge 403 U.S. 88, 91 S. Ct 1790 (1971)

REASONS FOR GRANTING THE PETITION

- 1) The petitioner seeks for this court to determine if the categorical denial of bail [Bail Reform Act], is an appropriate governmental interest suitable further by differential treatment, see County of Maricopa, Arizona, et al. v. Angel Lopez-Valenzuela, et al (2015)
- 2) The court will be able to effectuate The equal protection principle, exclusively associated with the U.S. Constitution which embodies the guarantees of equal treatment, procedural and [substantively].
- 3) The Constitutional principle demands that laws will only be legitimate if they can be described as "just and equal" concerning the involuntary servitude causes by the categorical denial of bail. [substantive due process]
See United States v. Salerno, 481 U.S. at 741, 747-52
- 4) Make a legal determination if the District court of Arizona properly applies judicial immunity when a pro se litigant moves the court to grant a 42 § 1983 for declaratory / injunction against a judge to determine the legalities of the procedural and substantive due process of that courts ruling.
5. The elimination of all forms of slavery and Racial discrimination inside the judicial system.
6. Evans seeks Equal Justice [Protection] under Lopez-Valenzuela v Arpaio, 770 F. 3d 772, 775 (2014)

reason for granting petition Continued

under (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3), petition for rehearing En Banc (1) B, to secure or maintain uniformity of the Court's decisions ~~and~~ ^{of} Lopez-valenzuela v. Arpaio 770 F.3d 772, 775 (2014) the Ninth Circuit has held Ariz. const., ^{ART II, § 22 (A)(4) as} ~~unconstitutional~~ unconstitutional by a divided En Banc panel, under two theories based on substantive component of the Due Process Clause. It first, reasoned that the amendment implicates a fundamental interest "in liberty" and is not narrowly tailored to serve Arizona's interest in ensuring that persons accused of crimes are available for trial. Id, at 780-786. second, the court held that the amendment "violates substantive due process by imposing punishment before trial" Id, at 791. which the Ninth Circuit ruling in Lopez-valenzuela v. Arpaio is based on united states supreme court precedent case law citing United States v. Salerno, 481 U.S. 739 (1987), which categorical denial bail is unconstitutional, and or denial of a full-blown Adversarial hearing or the third prong in the Bail Reform Act is held as ~~un~~ unconstitutional, when facially violated.

This united states precedent in salerno bound the Ninth Circuit to maintain the ~~consist~~ consistency of protecting the individual guaranteed rights of liberty protected under the 14th Amendment by way of 42 U.S.C. § 1983.

Any other decision inconsistent with what has been stated above would have to be presumed as prejudice.

Conclusion

In conclusion, Evans pleads to this court to grant this petition ~~of~~ ^{challenging} the courts ruling for Rehearing En Banc under (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3) as the petitioner has stated that the District Court has already shown their ability to "continue to construe pro se filings liberally." Hebbe v. Piler, 1227 F.3d 338, 342 (9th Cir. 2010), in the case of Olaoye v. Lehman et al NO. CV-19-04794-PHX-SRB (JFM) which displays the need to remedy an issue of Equal Protection as Evans the petitioner never received the opportunity to Amend his claim in order to meet the merits of substantive right violation against ~~a~~ a judge who does not have immunity from "unconstitutional behavior when the facts are sufficient to grant party Declaratory or injunctive relief against a judge." quoting Eggar v. City of Livingston, 40 F.3d 312 (9th Cir. 1994).

The petitioner also requests to make these statements orally of this petition, ~~needing~~ ^{needing} this court to grant petitioner Evans an oral argument to place on the record the facts, laws, and evidence of the violation of Administration of justice causing an irreparable injury to Mr. Evans person by the state of Arizona and the superior courts failure to under oath protect Evans individual guaranteed rights of Liberty as Evans has never made an oath under the color of law to protect his own Liberty as it is the judge responsibility to protect Mr. Evans guaranteed rights of Sovereignty, resulting in involuntary servitude, before trial, in disregard of ~~of~~ Salerno. (see Appendix E)

6

CONCLUSION

The petition for a writ of ^{mandamus} ~~certiorari~~ should be granted.

Respectfully submitted,

Shaver Evans

Date: July 6th 2020