20-5138

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PATRICIA A. MCCOLM, *Petitioner,*

v.

STATE OF CALIFORNIA et. al., *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ON PETITION FOR WRIT OF CERTIORARI

PATRICIA A. MCCOLM
P.O. Box 113
Lewiston, California 96052
(415) 333-8000

QUESTIONS PRESENTED

Question One: Whether imposition of a daily 15 minute time restriction on physical access to the court building and use of court services is a constitutional violation; in particular, where the apparent PERMANENT restriction is imposed solely by a clerk; targeting a single person with disability, without due process under threat to comply or be taken to jail; knowing the restriction is intended to be a prejudicial interference with the individual's exercise of constitutional/civil rights. And thus, does such restriction further violate the ADA by use of an arbitrary barrier; to deny of court services by persons with disability generally and in retaliation for exercise of civil rights.

Question Two: Whether the District Court erred and/or abused its discretion in use of 28 U.S.C. 1915 to dismiss an entire action as "duplicative" *without a first leave to amend*; in particular, where a separate cause of action is stated and the factors for dismissal re "duplicative" are not present.

Question Three: Whether the Ninth Circuit should be told that the appeal is sufficient to warrant further review; and thus, it is proper to vacate its Order (Appendix A) denying permission to appeal and to consider petitioner's motion for appointment of counsel.

And, such further and/or more clearly articulated questions as this Court deems appropriate.

LIST OF PARTIES

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TRINITY, its

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TRINITY MARSHALL SERVICE,

STACI WARNER HOLLIDAY, Off. & Ind.

LAURIE COOKE HANEY, Off. & Ind.

GARTH PEDROTTI, Sup. Ct. Marshall; Off. & Ind.

WILL ROVLES, Dep. Marshall, Off. & Ind.

RAY HURLBERT, Sgt Marshall, Off. & Ind.

ELIZABETH JOHNSON, Presiding Judge, Off. & Ind.

MICHAEL HARPER, Judge, Off. & Ind.

TRINITY COUNTY, CEO/BOARD OF SUPERVISORS

DOES 1-50.

RELATED CASES

There are no cases that arise from the same trial court case as the case in this Court.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES PAGE NUMBER

STATUES AND RULES

OTHER

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

[X] For cases from **federal courts**:

The ~~opinion~~ ORDER of the United States court of appeals appears at Appendix A to the petition and is

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

The ~~opinion~~ ORDER of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 DECEMBER 18, 2019

[ ] 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 _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including MAY 16, 2020 (Date) on MARCH 9, 2020 (date) in Application No. 19A999.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Deprivation of Constitutional rights under the First and Fourteenth Amendment; as well as, any other such this Court finds appropriate.

Deprivation of Civil rights prohibiting denial of access and retaliation under the American's With Disability Act of 1990 (42 U.S.C. section 12101 et seq.).

28 U.S.C. section 1915.

Federal Rules of Evidence, Rule 1001(e).

Federal Rule of Civil Procedure, rules 59e/60b.

STATEMENT OF THE CASE

Procedural Summary:

Pursuant to a near 20 year old pre-filing review order arising from petitioner's incompetence from undiagnosed medical conditions; on December 18, 2019, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) issued its *form* Order stating that: "*Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed;*" it is "***DISMISSED***." No operative facts or issues on the merits or lack thereof was set forth in the Order. (**APPENDIX A**) There was no ruling on Petitioner's Application for Appointment of Counsel to assist with the permission process and appeal (**APPENDIX F**).

The appeal to the Ninth Circuit included; but is not limited to the Order of the United States District Court for the Eastern District of California (District Court) filed April 16, 2019 (**APPENDIX B**), adopting the findings and recommendations of the magistrate judge (**APPENDIX C**) stating that: "***This action is DISMISSED as duplicative.***"

Petitioner was granted in forma pauperis status in the dismissed action No. 2:18-cv-02092-MCE-CKD PS. The magistrate judge made no finding or recommendation on the merit of fact or issue upon which the complaint was based; but merely alleged it to be "*frivolous because it is duplicative of an action that was previously filed in this court;*" *McColm v Trinity County et al.*, 2:12-cv-01984. No analysis pursuant to 28 U.S.C. 1915 was included in the findings and recommendations of the magistrate judge. Petitioner filed objections (**APPENDIX D, Exhibit 7**) and a motion pursuant to FRCP 59e/60b showing that the dismissal as "duplicative" under 28. U.S.C. 1915 did not apply in instant case. Petitioner also appealed the denial of the FRCP

59e/60 motion; the order pertaining thereto having ignored analysis under EACH of the statutory provision; in particular, as dismissal was a manifest injustice under the facts of the case and issues re denial of Petitioner constitutional rights and retaliation for exercise of civil rights. **(APPENDIX D, Exhibit 8)**

The **NOTICE OF APPEAL (APPENDIX D)** MAY HAVE BEEN PREJUDICED BY THE INADVERTENT FAILURE TO INCLUDE PAGES 8-9 OF THE MOTION TO ALTER OR AMEND ORDER OF DISMISSAL AND FOR RELIEF FROM JUDGEMENT DISMISSING THE ACTION; by reason that said pages address the operative issue: "Error of Fact/Law re Application of "Duplicative" to Dismiss." **(ATTACHMENT E)**

Background:

Petitioner is a 74 (June 5, 2020) qualified person with disability under the American's With Disability Act; who filed an access/retaliation ADA and age discrimination in employment civil rights action in the U.S. District Court, Eastern District in 2012 (2:12-cv-1984); currently before the Ninth Circuit on Appeal for permission to proceed (the case alleged in instant action as "duplicative").

The underlying case in instant petition pertains to a single California Superior Court, Trinity County **clerk's letter imposition of a 15 minute time limitation on access to court/court services enforced by threats against liberty interest**; without providing notice of actionable cause or providing a hearing and opportunity to be heard in opposition; even after objection and request for the facts and authority upon which the restriction is based; a restriction which **continues at this time**, in disregard of Petitioner's inquiries and request to withdraw same; and which appears, will continue to be a prejudicial deprivation of constitutional rights,

with impunity, absent appellate review.

Petitioner is informed and believes that the prejudicial restriction on access to the court/court services and harassment/threats pertaining thereto from court employees (clerks and court employee Marshals); is a knowing deprivation of Petitioner's constitutional/civil rights, in retaliation for having filed the above cited access/ADA discrimination and right to sue letter employment age discrimination/retaliation civil rights action against Trinity County, employees of the unaccessible court et. al.

Further, Petition believes that the Trinity court's unfounded prejudicial restriction and related retaliatory harassment/threats is unconstitutional and properly enjoined as requested in the complaint. Accordingly, the California Eastern District Court's dismissal under 28 U.S.C. 1915, without even a first leave to amend is wrong; as is its position that this plaintiff should have amended the initial civil rights case; instead of filing a separate action; even though, the statute of limitations would have run on a retroactive effort to add the cause to the 2012 case, a case that has now also been dismissed for a questionably alleged "failure to state a claim;" thus, making the magistrate judge's reasoning moot.

There appears to be some questionable motive for dismissal of pro se complaints as "frivolous" that has nothing to do with the merit of complaints seeking relief from constitutional/civil rights deprivations and other wrongs; unless the federal courts are trying to reduce case load by dismissal of pro se complaints with stigmatizing prejudicial outcomes as "frivolous" to "chill" pro se filings and/or to use such questionable outcomes as a "set-up" for a vexatious litigant order in the District Court, that would pervasively say to all potential pro se plaintiffs, irrespective of merit re cause, that no person with disability or stigma will be allowed

to continue filing in forma pauperis in a Federal court; in particular, in the Eastern District. Such a fundamental wrong and constitutional deprivation needs to be stopped before it becomes an accepted administrative norm.

Thus, it appears that the "silent" question is whether or not the Justices of the Ninth Circuit will continue to allow its pro se unit to recommend that persons with disability deemed to be "vexatious litigants" be denied review; absent administrative review by this Court. And as in instance case, denied review without consideration for appointment of counsel in seeking permission to proceed in bringing a constitutional issue before the court; and instead, as it appears, just allege that all in forma pauperis pro se appeals do not warrant review and will not be allowed to proceed; to reduce the case load, by denying justice to self-represented parties.

Petitioner is concerned that the standard for denial of access to federal courts is being measured by limitations of disability pro se. Although this Court at some point will need to address the stigma and loss of access to justice and destruction of life, liberty and property by imposition of insurance industry advocated "vexatious litigant" orders; at this time, Petitioner needs to have the Ninth Circuit tell the District Court to proceed with the case wrongfully imposing prejudicial restrictions on access to the court/court services and to enjoin such restrictions imposed without due process. In the alternative, if available, a more speedy remedy by this Court to tell the Trinity Court, it must withdraw its unconstitutional restrictions on petitioner's right of access to the court.

REASONS THE PETITION SHOULD BE GRANTED

To Protect the Integrity of the Court and Administer Justice.

Petitioner did NOT file a "frivolous" action, where it seeks relief from retaliatory restrictions under threat of loss of liberty upon exercise of constitutional rights and needs relief from the false, inherently prejudicial implications of a dismissal with prejudice as allegedly "frivolous;" which more likely than not, will add to the legal "disability" imposed on persons with actual ADA disability, persons who by reason of effects of disability are frequently wrongfully stigmatized as "vexatious;" in particular, by all those who now use the stigma as an excuse to deny constitutional/civil rights to this class of disadvantaged citizen - in all walks of life! The hateful discriminatory actions, injurious detrimental conduct and deprivation of rights directed at persons who have become a member of this disadvantaged class, with or without good cause; have become so pervasive, that it may be time for this Court to determine that persons who carry said stigma need the same protection of law as applied to other classes of persons who have been subject to hateful discrimination over the ages. Since persons with disability are at a distinct disadvantage in trying to meet court expectations by reason of the effects of disability outside his/her control, they are more likely to be the victims of bias and discrimination from stigma generally; and as demonstrated in this case, in the operation of the court. Constitutional protections should be applied equally to *all* citizens.

The appeal was not "insubstantial" and warrants review. In the interest of justice, the appeal should proceed.

Question One: **Whether imposition of a daily 15 minute time restriction on physical access to the court building and use of court services is a constitutional violation; in particular, where the apparent PERMANENT restriction is imposed solely by a clerk; targeting a single person with disability, without due process under threat to comply or be taken to jail; knowing the restriction is intended to be a prejudicial interference with the individual's exercise of constitutional/civil rights. And thus, in addition to violations of the First and Fourteenth Amendment, does such restriction further violate the ADA by use of an arbitrary barrier; to deny of court services to persons with disability generally and in retaliation for exercise of civil rights.**

Petitioner could find no case that addressed an arbitrary time restriction on either access to a court building or on use of court services. One article re "*Meaningful Access to the Courts*" stated that "*it is manifest that access (i.e., the ability to walk into the courthouse) simply for the sake of access cannot be the standard.*" Here, Petitioner was actually denied ability to "walk into the courthouse" and receive court services for more than a prejudicial 15 minutes per day! All imposed by a single clerk solely targeting petitioner, without notice and opportunity to be heard in opposition! How can that be standard? It most certainly must be a First and Fourteenth Amendment violation re denial of equal access to the courts; a manifest injustice.

Literally "barring the door" to a "targeted" citizen's access to the court and its processes for more than15 minutes under threat of arrest; is so "unthinkable," that it appears not to have been addressed by this or any court; yet, this petitioner has been prejudice by just such "unthinkable" abuse in deprivation of constitutional rights! So how can the Ninth Circuit believe the appeal is "so insubstantial as to not warrant further review?" Thus, it falls to this

Court to address the issue. Fear should not govern access to the court and exercise of civil rights; as it has done for Petitioner here, who has not been to the Trinity Court for about a year. Not only is restriction of access, under threat of loss of liberty; a detriment to civil rights, it is an extreme detriment to physical and mental health; in particular, to a person such as Petitioner, with substantial disability; e.g. Multiple Sclerosis and other debilitating medical limitations.

The small rural two disqualified judge court, has none of the usual on-line case/party indexes, dockets/register of actions; common to larger courts. Timely receipt of court information and document filing can only be obtained in-person at the court services office. Without open recourse to the court, petitioner would not only continue to be discriminated against as a person with disability in seeking relief from injustice; by being denied access to and services of the Trinity Superior Court; but would continue to be subject to retaliation, be harassed and threatened with arrest by Court employee clerks and court employee Marshals for exceeding the time restriction - by merely sitting quietly in a wheelchair in the public court services lobby; as occurred in instant case. Thus, there would continue to be a retaliatory denial of a constitutional right of access to services of the court by unauthorized restrictions on exercise thereof to 15 minutes, which is <u>essentially a complete denial,</u> preventing effective timely defense in any litigation; and would tend to prejudice any appeal. Petitioner needs the injunctive relief requested in instant action and/or as may be available by opinion of this Court to preserve her constitutional right of access to the court and due process under the First and Fourteenth Amendments.

The Ninth Circuit should allow the appeal to proceed and appoint of counsel.

Question Two: **Whether the District Court erred and/or abused its discretion in use of 28 U.S.C. 1915 to dismiss an entire action as "duplicative" *without a first leave to amend*; in particular, where a separate cause of action is stated and the factors for dismissal re "duplicative" are not present.**

As set forth in the Motion under FRCP 59e/60b (Doc 15):

"Error of Fact/Law re Application of "Duplicative" to Dismiss:

The assertion in the (Magistrate Judge) findings that instant complaint was "duplicative" without any reference to any matter in support but a few words from the INTRODUCTION, is so vague and ambiguous as to warrant being disregarded for any lawful purpose. The questionable finding cites no actual facts, definitions or authority that support the contention. The finding is in error.

The legal definition of "duplicate," the adjective of which is "duplicative" is either of two things **exactly alike** and often produced at the same time specifically: a counterpart identified in the Federal Rules of Evidence Rule 1001(e) as produced by the same impression as the original or from the same matrix or by means of photography, mechanical, or electronic recording, chemical reproduction, or another technique which "**accurately reproduces the original** (emphasis added)"! Black's Law Dictionary agrees, defining "Duplicate" as a verb: "To double repeat, copy, make, or add a thing **exactly like a preceding one; reproduce exactly** (emphasis added)." Even a first year law student intern, required to actually read the entire complaint(s) should be able to determine, that instant complaint clearly is NOT AN EXACT COPY OF THE 1984 COMPLAINT! The filing dates are different: 2012 versus 2018; the operative facts in

instant action upon which the causes are based, arise in 2017 specific to new circumstances, transaction et.al; as well as, new defendant actors specific to the facts stated. If some of the defendants are the same, then such is a showing that the requested injunctive relief is absolutely and urgently necessary, as the "bad guys" haven't changed their ways and will continue to manipulate others for infliction of harm to plaintiff, absent injunctive relief by a court. Plaintiff wants timely action in instant case to preserve her civil rights.

Were there anything the Court believed was in some way improper, then notice of intent to strike some specific part is available and/or to amend. However, nothing has been specified that would give notice of any defect subject to being stricken; unless it is assumed that plaintiff's introduction should not reflect the background which has led to instant detriment. An introduction does not contain the operative facts supporting the causes of action. Those facts are set forth separately in the complaint. Thus, reference to an introductory line as "duplicative" to allege grounds for a dismissal thereby, is seriously wrong. The "Introduction" can be stricken or amended, without affecting the operative facts and law upon which the case is based.

Attorney practice manuals, such as California Forms of Pleading and Practice and its equivalent Federal pleading forms, regularly repeat essential element language of causes with the different facts inserted. This does NOT make the claims/complaints EXACTLY the same. It only helps practitioners evaluate the facts to insert them appropriately to meet the court's pleading requirements and jury instructions. On information and belief, plaintiff's causes meet both the general form pleading

requirements and have the facts necessary to prevail per jury instructions.

Court's are in good faith, generally believed to protect citizens from harm, not give the "green light" to further biased retaliatory abuse and prejudicial harm through "dismissal" of citizen pleas for help; in order to allow the offenders to proceed with the intended abuse and destruction intended toward one who had the courage to "stand up" to the discrimination, false and defamatory representations/media comment and hostile environment, saying "no more!" PLEASE!

According to an article in the Ohio State Law Journal, there are only three types of alleged duplicative law suits: 1) Where the use of "duplicative" referencing a complaint, is applied where the exact SAME LAWSUIT IS FILED IN BOTH STATE AND FEDERAL COURT (not applicable here); 2) Where a defendant brings what is deemed to be a "reactive" lawsuit (not applicable here); and 3) Where different named plaintiff's bring separate class actions or shareholder derivative suits representing the same or similar classes on the same causes of action (not applicable here). PLAINTIFF'S SUITS DO NOT FIT ANY OF THESE DESCRIPTIONS of alleged "duplicative" lawsuits.

The finding that instant case is "duplicative" is error as a matter of fact and law; as is the nexus thereby, of being "frivolous." The Order of dismissal and Judgement are properly vacated and with permission, amended to proceed as a supplemental complaint.

Error re Application of "Frivolous" to Dismiss:

As stated above, although 28 U.S.C. section 1915 provides for dismissal of an action that is "frivolous," a district court may deem **an in forma pauperis complaint**

"frivolous" only if it lacks an arguable basis in either law or in fact; in other words, dismissal is only appropriate for a claim based on an indisputable merit-less legal theory and the frivolousness determination cannot serve as a fact finding process for the resolution of disputed facts. *Fogle v Pierson,* CA10 (Colo.) 2006, 435 F3d 1252, *Milligan v Archuleta,* CA10(Colo.) 2011, 659 F3d 1294. Accordingly, where as in instant case, the Magistrate Judge findings state she "***expresses no opinion regarding the merits of Plaintiff's claims***," adopting the recommendation of dismissal is error and an apparent abuse of discretion.

Cornell Law School presents on line its Wex Legal Dictionary in which it defines "frivolous:" *In the legal context, a lawsuit, motion, or appeal that lacks any basis and is intended to harass, delay or embarrass the opposition... Judges are reluctant to find an action frivolous, based on the desire not to discourage people from using the courts to resolve disputes.* It is hoped this Court agrees and does not abide discrimination/retaliation under any pretext or stigma by court employees. Fairness, impartiality, due process and equal protection should apply to all "persons" as the Constitution mandates.

There is no basis in fact or law that brings into question the merit of plaintiff's 2018 complaint in this matter. The clear need for injunctive relief to avoid prejudice from the hostile restrictive retaliatory operations of the Trinity Court employees, has been shown by the unlawful time restrictions without due process imposed solely by a hostile retaliatory clerk. The defendant court employees even ignored visiting retired Judge Dennis Murray, who gave notice at hearing in 2013, that all Trinity County clerk

requested restrictions on Patricia McColm's access to court services did not exist and that there was nothing before the court that would allow imposition of said restrictions; yet, defendants persist in the false and defamatory harassment of plaintiff by arbitrary unconstitutional restrictions, in order to retaliate for exercise of civil rights; including the filing of civil rights actions in this Court, to prejudice her defense in other matters; in particular, where PG&E tried to claim a non-existent recorded easement in her real property, with improper entry repeatedly destroying same, to place multiple transmission poles in the middle of her deceased father's planned sub-division. Most recently, without proper notice, PG&E destroyed 17 trees that CalFire stated, posed no risk of harm to the power lines. The knowing unlawful restrictions on physical right of access to court services by clerks is seriously prejudicial, a constitutional violation. The ADA and constitutional violations by defendants need to be stopped by this court, or civil rights under the laws of the United States mean nothing in California."

"Plaintiff could find no case in which the Ninth Circuit has determined the 1) **definition of "duplicative"** where two cases are filed in the same U.S. District Court some six years apart (not arising out of the same facts, not arising at the same time with all the same defendants and not an exact copy) with the first still pending; **2) what criteria is to be applied** for determining whether or not a case is "duplicative," **3) whether the second filed case may be deemed frivolous under 1915** where the first filed case is not an exact copy, is still pending and not dismissed as "frivolous" and where there has been no determination of fact or law applicable to the merits of any cause set forth in the second complaint (where all facts/causes are not the same as that first filed);

4) whether an alternative to dismissal is available; 5) consider what remedy *will avoid possible prejudice to a falsely alleged "same" pending action* and **6) what remedy will afford constitutional right of access to the court** in the second action and in the Superior Court.

The magistrate judge made a false assumption of "sameness." According to the Federal Rules of Evidence, Rule 1001(e): **"A 'duplicate' means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original."** Instant complaint is NOT the "same impression as the original;" not the same as the 2-12-CV-1984 complaint. It is neither "duplicative" nor "frivolous" and should not have been dismissed."

The Ninth Circuit should allow the appeal to proceed and appoint counsel.

Question Three: Whether the Ninth Circuit should be advised that the appeal is sufficient to warrant further review; and thus, it is proper to vacate its Order (Appendix A) denying permission to appeal and to consider petitioner's motion for appointment of counsel.

An appeal raising an issue of deprivation of civil rights of constitutional interest, is not so "insubstantial as to not warrant further review," inflicting an Order that: "it shall not proceed;" in particular where an appeal is urgent to ensure, that effects of illness and permanent disability do not become a measure of denying access to the court and due process in this Country.

Petitioner filed a Motion for Appointment of Counsel which was *not* ruled upon by the Ninth Circuit. The Notice of Appeal with supporting documents is required by a near **20 year**

old "pre-filing" Order, which by now; possibly, should have been vacated by time; in particular, since Petitioner has not had the medical or research ability to obtain its removal. Perhaps that is another issue for review; as there appears to be no limit on the time during which the stigma continues to prejudice outcomes of not just litigation; but of outcomes in many other activities and processes of life. A failure of diagnosis near 25 years ago, leading to said stigma from inability to competently attend to legal issues, should not become a curtain preventing a showing of injustice through pre-filing orders as has occurred for this petitioner.

The action may not have been well articulated by reason of disability; in such fashion as may have been possible by a competent attorney; but it is clearly not "frivolous" re "duplicative," and/or incapable of amendment. Thus, dismissal of the action as "frivolous" by reason of allegedly being "duplicative," without leave to amend appears to have been improper and warrants a proper review on appeal.

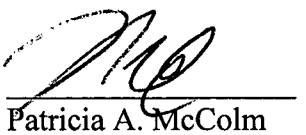
A Ninth Circuit "form" order with no facts or issues stated on the merits or lack thereof, without ruling on an application for appointment of counsel to assist with the permission process, should be deemed insufficient to dismiss the appeal of a qualified person with disability; where otherwise, operative facts of an issue for appeal is present; whether or not clearly articulated. Limitations of disability should be fairly considered and accommodation thereof applied to avoid prejudice in all federal courts.

The Ninth Circuit should allow the appeal to proceed and appoint counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Patricia A. McColm

Date: May 18, 2020