Corrected.

No. 19-3043(UNA)

In The
SUPREME COURT OF THE UNITED STATES

JEAN DUFORT BAPTICHON,
Petitioner,

V.

The United States and the Republican National Party
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

PETITION FOR RECONSIDERATION

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ISSUES PRESENTED

1. What, in this case, are the appropriate inquiry for determining when an in forma pauperis litigant's factual allegations justify a § 1915(d) dismissal for frivolousness.
2. What is the proper standard of appellate review of such a dismissal?
3. Whether any of the district court's procedural and evidentiary rulings constituted an abuse of discretion requiring reversal of the judgment.
4. Whether the district court has denied the plaintiff-appellant's right to counsel as an in forma pauperis litigant.
5. What standard governs the district court's discretion to grant or deny reconsideration and amendment in the case at bar?

LIST OF ALL PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS RELATED TO THE CASE IN THIS COURT

Docket No. 19-1241 C
The United States Court of Federal Claims
Jean Dufort Baptichon v. United States
Date of Entry of the Judgment: 09/26/2019

Docket No. 2009-5071
United States Court of Appeals for the Federal Circuit
Baptichon v. United States
Date of Entry of the Judgment: August 7, 2009

Docket No. 19-3043 (UNA)
United States District Court for the District of Columbia
Jean Dufort Baptichon v. United States, et al.
Date of Entry of the Judgment: Nov. 20, 2019

Docket No. 19-3043 (UNA)
United States District Court for the District of Columbia
Jean Dufort Baptichon v. United States, et al.
Date of Entry of the Judgment: January 30, 2020

Docket No. 20- 5031
United States Court of Appeals for the District of Columbia
Jean Dufort Baptichon v. United States, et al.
Date of Entry of the Judgment: June 23, 2020

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"Authorities upon which we chiefly rely are marked with asterisks."

OTHER AUTHORITIES

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JURISDICTION

The judgment of the district court was entered on November 20, 2009, (Appendix E). The plaintiff filed a motion to reconsider the district court's decision of November 20, 2019 on November 29, 2019 and another judgment of the district court denying that motion was entered on entered on January 30, 2020, (Appendix A). A notice of appeal was filed on February 7, 2020, and the case was docketed in the court of appeals on February 18, 2020 (D.C. Cir., No. 20-5031). Petitioner filed his appeal on March 13, 2020. Petitioner is now filing herein a petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit for a rehearing en banc. 28 U.S.C. 2101(e). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

PRELIMINARY STATEMENT

On June 23, 2020, the United States Court of Appeals for the District of Columbia released an order denying plaintiff-appellant's appeal for remand requesting an answer from the defendants. The accrual of intervening facts and circumstances create an appearance and a reality that an indigent plaintiff like the petitioner who filed a claim in forma pauperis in the district court of the United States is being denied equal justice under the law, as well as the absence of sound judicial decision making. The plaintiff-appellant respectfully asks this Court to reconsider the court's denial of his appeal for a remand requesting an answer from the defendants

STATEMENT OF THE CASE

In his complaint, the in-forma pauperis plaintiff-appellant factually alleged that the "Medal of Merit" has been presented to him by defendants' president in appreciation for his support as a member of their "Task Force;" (see Appendix B annexed hereto as

evidence); that this "Medal of Merit" is signed by George Bush, President; that the appellant reported to the Federal Bureau of Investigation (FBI) that another "Medal of Merit" presented to him by then President Ronald Reagan was embezzled by one of the defendants' banks, i.e., "The Citizens Bank of Maryland, a/k/a Citizen National Bank of Maryland." (See Appendix C annexed hereto as evidence). As evidenced by one of the letters from the defendants' senator written to the plaintiff-appellant, the plaintiff-appellant respectfully asks this Court to take judicial notice that "Military Decorations, Medals, Congressional Pins, Security Clearance Passes, even Rotary Pins, they all indicate accomplishment, achievement, honor and distinction." (See Appendix D annexed hereto as reference). However each of them has its own meaning, purposes and values that are for its recipient to determine and appreciate even where no stated value, whether monetary or otherwise, is mentioned on the face of the instrument or intrinsically. On that basis the appellant's complaint does not lack an arguable basis in law or in fact because the monetary value he attributed to said "Medal of Merit" can only be assessed by interpreting the symbols on the "Medal" and their meanings in the presidential context, for want of definition. For the district court to rule that the appellant's complaint is frivolous is to contradict the defendants' senator who wrote that "[T]here are some people in this country who only complain about the way things are and never do anything about it" and that the appellant shows "that he is willing to take a stand for his beliefs and work hard to make them a reality!" For the court of appeals to affirm the district court's ruling that the appellant's complaint is frivolous is to conflict with the defendants' senator who wrote that it is the appellant's "character and leadership that make him such an important part of the NRSC," and why the senator believes the plaintiff-appellant is "so

deserving of our NRSC campaign 'Lapel Pin, that if there is one thing America needs today, it's more people with" the plaintiff's appellant's "character and leadership.""

Accordingly, the in-forma pauperis plaintiff-appellant's factual allegations do not justify a § 1915(d) dismissal for frivolousness as to the monetary value of the Presidential Medal of Merit, which the plaintiff-appellant appraised and believes to be on a spectrum of $20 at one end, in which case the district court would not have dismissed the complaint for frivolousness, and $20 trillion at the other end of the spectrum with a median value of $20 billion in which case the district court ruled that the complaint is frivolous and the court of appeals affirmed without a clear definition..

ARGUMENT

THE IN FORMA PAUPERIS PLAINTIFF-APPELLANT'S FACTUAL ALLEGATIONS DO NOT JUSTIFY A § 1915(D) DISMISSAL FOR FRIVOLOUSNESS

.1. As defined, frivolous means lacking a legal basis or legal merit, not serious, and not reasonably purposeful, see Black's Law Dictionary, Seventh edition. The Federal Rule of Appellate Procedure 38 provides for the award of damages and costs if the appellate court determines that an appeal is frivolous, as the Court of Appeals for the District of Columbia Circuit has concurred that the plaintiff-appellant's lawsuit has no legal basis and was filed to either harass or extort money from the defendants in this case and affirmed the district court's dismissal of the case without leave to amend on the grounds that the appellant's allegations are frivolous, and that "appellant has not demonstrated that the district court abused its discretion in denying his motion to alter or amend the judgement, citing Firestone v. Firestone, 76 F. 3d 1205, 1208 (D.C. Cir. 1996) (per Curiam)." (See Appendix A annexed hereto).

As initially cited by the district court, Neitzke v. Williams, 490 U.S.319, 325 (1989) and Firestone v. Firestone, id, both cases are distinguishable in facts from the case at bar and are similar only to the extent that both were dismissed for frivolousness by the district court. **In enacting the federal in forma pauperis statute, Congress apparently "intended** to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because poverty makes it impossible . . . to pay or secure the costs " of litigation. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 342 (1948) (internal quotations omitted). At the same time that it sought to lower judicial access barriers to the indigent, however, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." Neitzke, supra, at 324. In response to this concern, Congress included subsection (d) as part of the statute, which allows the courts to dismiss an in forma pauperis complaint "if satisfied that the action is frivolous or malicious." **This recognition of the** lack of "an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits in" Neitzke, supra, at 324," **and the inclusion of subsection (d)** by Congress are flawed and biased reasoning to further discrimination against poor litigants who most likely are blacks, and most likely to be arrested, and unrepresented. Understandably, Congress made it to appear that it "intended to guarantee that no citizen shall be denied the opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States solely because poverty makes it impossible to pay or secure the cost of litigation" by enacting Section 1915, but then subsection (d) as a pretext to deny that opportunity, which Congress did not really

intend to guarantee in the first place, by authorizing the courts to dismiss an in forma pauperis complaint "if satisfied that the action is frivolous or malicious." **Neitzke v. Williams, supra, provided the courts with their first occasion to construe the meaning of "frivolous" under § 1915(d).** In that case, the courts held that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Id at 325. In Neitzke, the courts were concerned with the proper standard for determining frivolousness of legal conclusions, and determined that a complaint filed in forma pauperis which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) may nonetheless have "an arguable basis in law" precluding dismissal under § 1915(d). Neitzke, 490 U.S., at 328-329. In so holding, the courts observed that the in forma pauperis statute, unlike Rule 12(b)(6), "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Id., at 327. "Examples of the latter class," the courts said, "are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." Id., at 328. Arguably, assuming that the plaintiff-appellant's claims or complaint are claims describing fantastic or delusional scenarios, these claims are products of the defendants and the delusional scenarios are injuries caused by the defendants in issuing such "Presidential Medal of Merit." The case at bar is distinguished from those claims describing fantastic or delusional scenarios, claims, and federal judges are not familiar with the claims at bar because it is unprecedented and the claims therein were prompted solely by actions of the defendants whose presentment of the "Presidential Medal of Merit"

to the plaintiff-appellant may be unconstitutional, emphasis added, which affected the plaintiff-appellant and which the plaintiff-appellant did not solicit, **nor requested or demanded from the defendants. Hence,** federal judges are not familiar with the case at bar because it is unprecedented and was filed in good faith.

Furthermore, the claims that the petitioner advances are not wholly frivolous and are in fact meritorious because arguably, there is a difference between a "medal for merit" and a "medal of merit." For the former, the lower courts (specifically the Court of Federal Claims) correctly stated that:

> "Congress created a decoration known as the "Medal for Merit" in 1942, Act of July 20, 1942, Ch. 508 §2(2), 56 Stat. 662, 663 (codified as amended at 10 U.S.C. §1122 (2018). In doing so, Congress empowered the President to award the Medal for Merit to civilian who had distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services" in prosecuting World War II. Id. Congress specified that the President's decision to award the Medal for Merit was discretionary and would be carried out "under such rules and regulations as [the President] shall prescribe;" that pursuant to that authority, three executive orders were issued pertaining to the Medal for Merit: Executive Order No. 9857A: Medal for Merit, 12 Fed. Reg. 3538 (May 27, 1947); Exec. Order 9331: Medal for Merit, 8 Fed. Reg. 5423 (April 19, 1943); Exec, Order 9286: Medal for Merit, 7 Fed. Reg. 10899 (Dec. 24, 1942).

But, for the latter, Congress did not create a decoration known as the "Medal of Merit" under any act or authority to empower either President Reagan or President Bush to award the "Medal of Merit" to the petitioner. As the lower courts (the Court of Federal Claims) observed that the petitioner appears to conflate the "Medal for Merit" with the "Medal of Merit" award that the petitioner has in fact received from both Presidents Reagan and Bush, the "Medal of Merit" is an entirely different award altogether. Hence, granted such true distinction, the lower courts erroneously failed to identify any authority created

by Congress that empowers the Presidents to award the "Medal of Merit" award as presidents to the Petitioner during their presidency. Consequently, such lack of statutory or congressional authority to issue such "Medal of Merit" award to the petitioner is a violation of the Constitutional Bicameralism Principle, thereby making such issuance of such "Medal of Merit" award to the petitioner unconstitutional and a sua sponte dismissal for failure of the petitioner to state a claim does violate due process as his claim is timely because it was filed within the statute of limitation upon discovering all the continuing wrongs done to him by the defendants and is tenable as a matter of law because at trial the petitioner can prove in fact that he is entitled for relief because he had suffered injuries in fact. Therefore, the in forma pauperis plaintiff-appellant's factual allegation do not justify a § 1915(d) dismissal for frivolousness.

THE PROPER STANDARD OF APPELLATE REVIEW OF PLAINTIFF-APPELLANT'S COMPLAINT'S DISMISSAL THAT THE COURT OF APPEALS SHOULD HAVE USED IS THE POST-FILING DELAYED REVIEW

2, There are three approaches that have emerged that stem primarily from different interpretations of sections 1915(a) and 1915(d) and that would be proper standards of appellate review of the district court's dismissal of **the** plaintiff-appellant's complaint: (1) post-filing immediate dismissal, (2) post-filing delayed dismissal and (3) pre-filing dismissal. The first procedure is not applicable in this case because the plaintiff-appellant case is patently not frivolous and his allegations are not untrue. The third procedure also is not applicable in this case because the district court did not simultaneously consider both issues of poverty and frivolousness at the initial review of the in forma pauperis application, which the statutory language, earlier judicial analysis of legislative history

and policy considerations favor. However, the proper standard of appellate review of plaintiff-appellant's complaint's dismissal that the court of appeals should have used is the post-filing delayed review. "Under the procedure of post-filing delayed review, a complaint is docketed and the motion to proceed in forma pauperis is granted, if the plaintiff meets the financial criteria. A court, however, cannot dismiss the complaint on grounds of frivolousness until the issuance of process and the responsive pleadings." E.g., Bayron v. Trudeau, 702 F.2d 43, 45 (2d Cir. 1983). In the case at bar, the plaintiff-appellant's motion to proceed in forma pauperis was granted as the plaintiff-appellant meets the financial criteria. Although courts using this approach acknowledge that frivolous suits waste judicial resources, they maintain that IFP plaintiffs should receive the same procedural protections afforded non-indigent plaintiffs. *See* McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3d Cir. 1980) (despite concerns of court congestion and financial burden to public, IFP complaints cannot be dismissed summarily); Dear v. Rathje, 485 F.2d 558, 560 (7th Cir. 1973) (although that court was "not unsympathetic" to problem of increasing numbers of "'professional litigants,'" it held that IFP plaintiffs were entitled to responsive pleadings). The purpose of section 1915 is to afford indigents the same services of the courts as non-indigent litigants. *See* Marks v. Calendine, 80 F.R.D. 24, 27 (N.D. W. Va. 1978), *aff'd sub nom.* Flint v. Haynes, 651 F.2d 970 (4th Cir. 1981), *cert. denied,* 454 U.S. 1151 (1982); *see also* Coppedge v. United States, 369 U.S. 438, 447 (1962) ("The point of equating the test for allowing a pauper's appeal to the test for dismissing paid cases, is to assure equality of consideration for all litigants."); Horsey v. Asher, 741 F.2d 209, 211 (8th Cir. 1984) (section 1915 must be interpreted to afford IFP complaints same standards applicable to paid complaints); McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3d Cir. 1980)

(Congress, in enacting section 1915, mandated that courts should apply same dismissal procedures to IFP plaintiffs as non-indigent plaintiffs, "[o]therwise the scales of justice will be tilted against [the] ... poor"). After all, moral concern is as important as monetary concern to the public.

The procedure under delayed post-filing dismissal requires the issuance of a summons and complaint once the complaint has been filed. *See* Tingler v. Marshall, 716 F.2d 1109, 1112 (6th Cir. 1983); Nichols v. Schubert, 499 F.2d 946, 947 (7th Cir. 1974). If the defendant moves to dismiss, the IFP plaintiff is notified and given an opportunity to oppose the motion. *See* Tingler v. Marshall *id.* However, in this case the defendants were not given the opportunity by the district court to answer since they have clouts over their judges In the event of dismissal, the court must provide the plaintiff with a statement of the grounds for dismissal and afford the plaintiff an opportunity to cure by amending the complaint, *see* Tingler v. Marshall, 716 F.2d 1109, 1112 (6th Cir. 1983), **which the district court also** failed to do in this case. The district court did not provide the plaintiff-appellant with a statement of the grounds for dismissal except a boiler-plate dismissal for frivolousness, which does not actually state the frivolous fact or law, and did not afford the plaintiff-appellant the opportunity to cure by amending his complaint. Courts reason that responsive pleadings are essential to the preservation of the adversarial scheme. They point out that the traditional adversarial relationship is undermined when the court ceases to act as a neutral arbiter and actively participates at the pleading stage, as the district court did in this case. *See id.* at 1111 (holding dismissal on merits prior to responsive pleadings improper).

THE DISTRICT COURT'S PROCEDURAL AND EVIDENTIARY RULINGS CONSTITUTED AN ABUSE OF DISCRETION REQUIRING REVERSAL OF THE JUDGMENT

3. In this case, the district court and the court of appeals "appear to be adopting an inquisitorial role" Lewis v. New York, 547 F.2d 4, (2d Cir. 1976) (courts should "avoid an inquisitorial role"). or acting as a proponent for the defendant. Thus, courts find it inappropriate to prevent defendants from making responsive pleadings. Moreover, under Rule 4(a) after the complaint is filed, a court clerk must issue a summons to a non-indigent plaintiff who becomes responsible for service thereafter on defendant parties. Fed. R. Civ. P. 4(a). *See* Cameron v. Fogarty, 705 F.2d 676, 678 (2d Cir. 1983) ("Procedurally, service of process of a filed complaint is not discretionary. [Rules] 3, 4(a)."), *aff'd,* 806 F.2d 380 (2d Cir. 1986); Franklin v. Oregon, 662 F.2d 1337, 1341 (9th Cir. 1981) ("[L]iteral reading of [Rule] 4(a) supports the proposition that a summons must be issued before a dismissal for failure to state a claim . . . ."), *on remand,* Franklin v. Oregon, 563 F. Supp. 1310 (D. *Or.* 1983), *aff'd in part and rev'd in part sub nom* Franklin v. Murphy, 745 F.2d 1221 (9th Cir. 1984); Frankos v. LaVallee, 535 F.2d 1346, 1347 (2d Cir.) (complaint dismissed erroneously "prior to service of summons as required by [Rule] 4(a)"), *cert. denied,* 429 U.S. 918 (1976); Dear v. Rathje, 485 F.2d 558 560 (7th Cir. 1973) (practice of dismissal before issuance of process "is in clear conflict with Rule 4(a) ... which imposes a duty on the Clerk to issue the summons 'forthwith'"); *see also* Estelle v. Gamble, 429 U.S. 97, 112 (1976) (Stevens, J., dissenting) (although complaint filed, "instead of causing it to be served on the defendants as required by [Rule] 4, the Clerk ... dismissed [it]"); Bauers v. Heisel, 361 F.2d 581, 584 (3d Cir. 1966) (expressing disfavor with immediate post-filing dismissal because "the requirements of Rule 4(a) are explicit"), *cert. denied,* 386 U.S. 1021

(1967); Comment, *State Prisoners. Federal Courts, and Playing by the Rules An Analysis of the Aldisert Committee's Recommended Procedures for Handling Prisoner Civil Rights Cases, 5* U. Puget Sound L. Rev. 131, 147 (1981) [hereinafter *Playing by the Rules]* (under the Rules "service of process is not discretionary"). *But see* Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986) (IFP proceedings can be dismissed when it becomes clear merit is lacking); Ron v. Wilkinson, 565 F.2d 1254, 1258 (2d Cir. 1977) (automatic service of IFP complaints would place undue hardship on public). One author argues, however, that the 1983 amendments to Rule 4 (specifically Rule 4(c) (2) (B) (i)) that authorize a court to serve process for IFP plaintiffs also give the court discretion to determine if summons should issue. These amendments, however, merely indicate that the court is responsible for delivery of service. They do not grant the court discretion to determine if process should issue. *See* Franklin v. Oregon, 563 F. Supp. 1310, 1317 (D. Or. 1983) (when proceeding in forma pauperis, procedure for issuance of summonses and service requires court to provide IFP plaintiff, or his attorney, with necessary forms; then plaintiff "forward[s] the completed forms to the U.S. Marshal, or a substitute, for service"), *aff'd in part and rev'd in part sub nom.* Franklin v. Murphy, 745 F.2d 1221 (9th Cir. 1984).

Section 1915(c), however, directs officers of the court to issue summons when an IFP complaint is filed, and to serve process for IFP plaintiffs. Neither the Rules nor the IFP statute vests a judge with discretion to intervene at this stage of the pleadings to determine whether the clerk may issue a summons." Thus, courts reason that under the post-filing delayed dismissal approach an IFP complaint may not be dismissed before issuance of process. Therefore, the District Court in the case at bar has dismissed erroneously the plaintiff-appellant's complaint "prior to service of summons as required by

[Rule] 4(a). *See* Wartman v. Branch 7, Civil Div., County Ct, 510 F.2d 130, 132, 134 (7th Cir. 1975). Other courts have expressed a preference for responsive pleadings, but permit immediate dismissal in some cases. *See* Tingler v. Marshall, 716 F.2d 1109, 1110-11 (6th Cir. 1983); Bayron v. Trudeau, 702 F.2d 43, 45 (2d Cir. 1983); Redwood v. Council of D.C., 679 F.2d 931, 934 (D.C. Cir. 1982); McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3d Cir. **1980),** (despite concerns of court congestion and financial burden to public, IFP complaints cannot be dismissed summarily); Dear v. Rathje, 485 F.2d 558, 560 (7th Cir. 1973) (although that court was "not unsympathetic" to problem of increasing numbers of "'professional litigants,'" it held that IFP plaintiffs were entitled to responsive pleadings). The purpose of section 1915 is to afford indigents the same services of the courts as non-indigent litigants. *See* Marks v. Calendine, 80 F.R.D. 24, 27 (N.D. W. Va. 1978), *aff'd sub nom.* Flint v. Haynes, 651 F.2d 970 (4th Cir. 1981), *cert. denied,* 454 U.S. 1151 (1982); *see also* Coppedge v. United States, 369 U.S. 438, 447 (1962) ("The point of equating the test for allowing a pauper's appeal to the test for dismissing paid cases, is to assure equality of consideration for all litigants."); Horsey v. Asher, 741 F.2d 209, 211 (8th Cir. 1984) (section 1915 must be interpreted to afford IFP complaints same standards applicable to paid complaints); McTeague v. Sosnowski, Id. (Congress, in enacting section 1915, mandated that courts should apply same dismissal procedures to IFP plaintiffs as non-indigent plaintiffs, "[o]therwise the scales of justice will be tilted against [the] ... poor"). *See* Tingler v. Marshall, 716 F.2d 1109, 1112 (6th Cir. 1983); Nichols v. Schubert, 499 F.2d 946, 947 (7th Cir. 1974).*See* Tingler v. Marshall, *See id.* at 1111 (holding dismissal on merits prior to responsive pleadings improper). Lewis v. New York, id. (Courts should "avoid an inquisitorial role"). Nash v. Black, 781 F.2d 665, **668** (8th Cir. 1986) (expressing disfavor

with immediate dismissal procedures because "district court is cast in the role of a proponent for the defense, rather than an independent entity"); *accord* Tingler v. Marshall, (citing Franklin v. Oregon, 662 F.2d 1337, 1342 (9th Cir. 1981)). Reluctant to act as protectors for the defendant, these courts maintain that a defendant's remedies lie in civil actions for abuse of process, or in equity for injunctive relief. *See* Dear v. Rathje, 485 F.2d 558, 560 (7th Cir. 1973). Hence, the district court abused its discretion by dismissing the plaintiff-appellant's complaint without leave to amend and its procedural and evidentiary rulings constituted an abuse of discretion requiring reversal of the judgment.

THE DISTRICT COURT HAS DENIED PLAINTIFF-APPELLANT'S RIGHT TO COUNSEL AS AN IN FORMA PAUPERIS LITIGANT

4. The district court has denied plaintiff-appellant's right to counsel as an in forma pauperis. Under the rule, a lawyer must not bring or defend a proceeding, nor assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous (e.g., a good faith argument for an extension, modification or reversal of existing law), and must inform herself of the facts and applicable law of the case and determine that she can make a good faith argument supportive of the client's position. Compliance with which is abound in the case at bar. However, it is not necessary for the lawyer to believe in the ultimate success of the action. "Also an action or defense is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only through discovery" [RPC 3.1, comment 2]. Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975).

The layman's, (here the plaintiff-appellant's) inability to overcome the intricacy of the adjudicative process, which gives rise to a constitutional guarantee of counsel in criminal prosecutions, equally impedes effective access of uncounseled litigants, like the plaintiff-

appellant here, to the judicial process in civil cases. See Goldberg v. Kelly, 397 U.S. 254, 270 (1970); Coston v. Sears, Roebuck & Co., 556 F.2d 1305, 1308 (5th Cir. 1977). Because states hold a monopoly over techniques of dispute settlement in certain civil cases, the states are forbidden in such instances to impose court fees that have the effect of denying indigents access to the courts. See Buddie v. Connecticut, 401 U.S. 371 (1971) (divorce decrees). A state may reasonably determine that adjudicative complexity, although not rising to the level of a constitutional violation, impedes the access of uncounseled indigents like the plaintiff-appellant in this case, to expeditious resolution of civil disputes. The resultant state interest in providing attorneys to impecunious litigants in civil suits like the impecunious plaintiff-appellant in this civil case, will not be diminished in the case of a plaintiff who voluntarily comes into court, inasmuch as his inability to redress an injury causes an involuntary loss equal to that of a civil defendant who is unable effectively to protect his interests in court. See Schlagenhauf v. Holder, 379 U.S. 104, 114 (1964).

An affirmative finding by either the district court or the court of appeals that assistance of counsel to the plaintiff-appellant would advance the fairness of the proceeding was and is necessary, in this civil case, to ensure the applicability of the public service exception. In the case at bar the district court did not use its discretion to appoint legal counsel to the in forma pauperis plaintiff-appellant the way it used its discretion to dismiss the complaint, although the plaintiff's motion to proceed in forma pauperis was granted by the district court, while there exists state and federally funded programs to provide legal assistance to the poor in civil cases," see, e.g., Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996-29961 (1976 & Supp. III 1979); 18 U.S.C. § 3006A (1970); N.Y. Jud. Law § 35(1)

(McKinney Supp. 1980); N.Y. County Law §§ 722 to 722-f (McKinney Supp. 1980) (criminal, habeas corpus and civil retention matters); N.Y. Fam. Ct. Act §§ 245, 248, 261, 262 (McKinney 1975) (specified family court matters), affirms that such assistance serves a public purpose. If it did not, such expenditures would be improper exercises of governmental spending powers. The district court has denied the plaintiff-appellant's right to counsel as an in forma pauperis litigant.

Prudential concern for minimizing the burden upon members of the legal profession militates for judicious use by the lower courts of their authority to compel an attorney to represent indigent plaintiff-appellant in this civil case. Although exercises of this authority are not immune from constitutional scrutiny, neither are they unconstitutional. Appointment of an attorney to represent the plaintiff-appellant in this civil case does not violate due process. The thirteenth amendment prohibition of involuntary servitude does not limit government authority to compel public services of this nature. Moreover, the absence of compensation for legal assistance rendered upon court appointment does not contravene the takings clause because of the reciprocal economic benefit granted attorneys by virtue of their monopoly of practice in the state-created adjudicative system. The district court has denied the plaintiff-appellant's right to counsel as an in forma pauperis litigant.

WHEN A DISTRICT COURT DISMISSES A COMPLAINT WITHOUT LEAVE TO AMEND, A SUBSEQUENT MOTION FOR LEAVE TO AMEND SHOULD BE JUDGED BY ORDINARY FEDERAL RULE OF CIVIL PROCEDURE 15(A)(2) STANDARDS (AS THE SECOND, FOURTH, FIFTH, SEVENTH, AND ELEVENTH CIRCUITS HAVE HELD)

5. The district court has dismissed the plaintiff-appellant's complaint without leave to amend. "Under Federal Rule of Civil Procedure 15, leave to amend a complaint is "freely

give[n]," to further the goal that claims be tested "on the merits" rather than dismissed on technicalities. Foman v. Davis, 371 U.S. 178, 182 (1962). When a complaint is dismissed without leave to amend, a plaintiff who wishes to amend does so by moving to reconsider in order to permit amendment, see id., which the plaintiff-appellant has done in this case and was denied by the district court.

> *"Despite Foman's decision to apply Rule 15's liberal standard to post-dismissal motions for leave to amend, the courts of appeals are broadly and deeply divided about what standard governs a district court's discretion to grant or deny reconsideration and amendment in that circumstance. Five circuits have held, in line with Foman, "that Rule 15(a) (2)" governs, because a party's ability to have her claim tested on the merits should not depend on whether the district court chose to grant leave to amend when it dismissed the complaint. Four circuits (including the court of appeals here) have held that a post-judgment motion for leave to amend must satisfy a stricter standard than a pre-judgment motion seeking the same result. One circuit has issued contradictory opinions on this question. The conflict implicates basic principles of federal pleading procedure. If, as the First, Sixth, Eighth, and Ninth Circuits hold, the standard for amendment differs based on whether the district court happened to grant leave to amend upon dismissal, then, a litigant's window of opportunity to plead correctly and the consequences for inadequate pleading will vary from judge to judge. That result diminishes both predictability and fairness, as different plaintiffs in the same courthouse will be held to different standards. The better rule is that applied by this Court in Foman and by the Second, Fourth, Fifth, Seventh, and Eleventh Circuits. Rule 15's command that leave to amend be freely given (except in case of futility, prejudice, undue delay, or bad faith) applies whether amendment is sought before or after a Rule 12(b) (6) dismissal, so that all plaintiffs have an equal opportunity to correct their pleading deficiencies and thereby to enable their claims to be tested on the merits. A related question, also central to the decision below and also a subject of a circuit split, is how to measure a plaintiff's "delay" in amending a complaint. The First, Third, and Eighth Circuits hold that a district court should measure delay from the filing of a motion to dismiss, which puts the plaintiff on notice only that her complaint might be deficient. This approach is problematic because it forces a plaintiff to seek amendment before knowing whether the motion will be granted — that is, to assume that the motion will be granted and to spend the additional resources to develop an amended complaint that will not be necessary if the motion is denied. The better rule, applied by the Second, Sixth, and Seventh Circuits, is that delay in amending should be*

measured from the event that necessitates the amendment — the granting of the motion to dismiss."

The courts of appeals are so broadly divided about what standard governs the district court's discretion to grant or deny reconsideration in civil cases; and in this case, the United States Court of Appeals for the District of Columbia has entered a decision in so much conflict with the decision of another United States court of appeals on the same important matter; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power. This Court should grant certiorari to resolve both of these conflicts among the courts of appeals and ensure that amendment standards are uniform.

This Court should vote to hear Baptichon. Most importantly, if this Court reconsiders 20-5031 and grants the petitioner's petition, this Court will negate the appearance of selection and deselection based upon the clout of the litigants (i.e., the clout of the United States Government, here the defendants, as compared to the lack of clout of a simple United States citizen, here the petitioner). The granting of the Baptichon's Petition for Certiorari will also go a long way to quelling the belief held by the plaintiff-appellant that Baptichon 20-5031 was denied to save the Washington, D.C. power elites from embarrassment by holding that the complaint is frivolous. By granting this motion for rehearing and granting petitioner's 20-5031 Petition, this Court will demonstrate convincingly that the only place where all litigants can appear with some semblance of equality is the United States Supreme Court.

It appears that at best, when a competing party is the United States Government, there is an automatic clout in the Courtroom that influences judges to rule against the (weaker)

party whose case is up for consideration for certiorari in the United States Supreme Court. This gives the unmistakable appearance that even the legal system is rigged against those without substantial clout to steer results in a direction that is favorable to that particular interest.

If this Court grants the relief requested, it will restore confidence in the injured-in fact petitioner that the United States Supreme Court is the one deliberative body whose incorruptibility is inviolate. Because right now it appears to many that the pathway to the United States Supreme Court might be enhanced by the people you know and the strings you can pull at the lower courts and other places, rather than the intrinsic value of the case at hand and the applicability of the issues.

CONCLUSION

This Court should follow its decision in Boag v.MacDougall 454 U.S. 364 (1982), and Denton v Hernandez, 504 U.S. 25 (1992), which held respectively that the court of appeals' ground for dismissing the complaint was erroneous as a matter of law and that federal courts must construe unartful pleading liberally in pro se actions, citing Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 595, 30 L.Ed.2d 652 (1972), that so construed, the complaint here states a cause of action, and that the court of appeals incorrectly limited the power granted the courts to dismiss a frivolous case under § 1915(d). Therefore this Court should grant the petition for certiorari, reverse the judgement of the court of appeals and remand for application of the proper standard and for further proceeding consistent with its opinions.

Date: August 20, 2020`
County of Nassau
New York

Respectfully submitted,

Jean Dufort Baptichon
Petitioner Pro Se