

20-5849
No. _____

Supreme Court, U.S.

FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

UZOMA IGBONWA
PETITIONER
VS.
FACEBOOK, INC., AND MARK ZUCKERBERG,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

UZOMA IGBONWA
#7710 GILBERT STREET
PHILADELPHIA, PA 19150

ORIGINAL

QUESTION(S) PRESENTED

1. Whether Facebook was should be protected by the immunity provision of Section 230 of the Communication and Decency Act when they clearly violated its own terms of service.
2. Whether the Ninth Circuit Court of Appeals Deprived the Petitioner of his Due Process Right to be heard when they stated that Petitioner did not have facts supporting his argument of breach of conflict while the facts were clearly stated in the brief.
3. Whether the Ninth Circuit Court of Appeals' ruling in this case directly conflicted with its own ruling on the same argument in a different case that came before them.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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:

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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 **NOT REPORTED**; 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 has been designated for publication but is not yet reported; or, is unpublished.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 _____; 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 has been designated for publication but is not yet reported; or, is unpublished.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 has been designated for publication but is not yet reported; or, is unpublished.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 _____ to the petition and is _____ at Appendix _____; or,
 reported at _____

[] has been designated for publication but is not yet reported; or, [] is unpublished.

1.
JURISDICTION

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

The date on which the United States Court of Appeals decided my case was
November 26, 2020

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: , March 19, 2020. ~~Mandate entered on March 27, 2020.~~

and a copy of the order denying rehearing appears at Appendix C.

[] 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).

[] 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: _____

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

***THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

STATEMENT OF THE CASE

Petitioner filed a civil lawsuit against Facebook, Inc., and its owner, Mark Zuckerberg, raising claims about their violation of its own terms of service, and for defamation by allowing people with fake accounts to remain on their platform to defame and hurt Petitioner with publication of false accusations and information, including accusing Plaintiff of being a money launderer, a wife beater, and a scammer. Petitioner reported the incident on numerous occasions to Facebook who ignored him. The civil lawsuit was filed in San Francisco, California, and the appeal went to the Ninth Circuit Court of appeal which was denied on November 26, 2019.

Rehearing was denied on March 19, 2020. Petitioner now files this petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

- I. Whether Facebook should be protected by the immunity provision of Section 230 of the Communication and Decency Act when they clearly violated its own terms of service.

Facebook's terms of service prohibit users from maintaining fake accounts, bullying, intimidating or harassing others in the community, posting false or misleading information about others, promoting violence or threatening others, et cetera. If such behavior is exhibited, the perpetrator's account, Facebook promises, will be taken down. Facebook also made available a mechanism whereby report of any such transgression of its terms of service would be reported for appropriate action to be taken.

On May 28, 2020, the President of the United States signed an executive order, captioned "Executive Order on Preventing Online Censorship." The Executive order removed the liability that

Section 230 of the Communication and Decency Act would ordinarily provide for interactive internet provide such as Facebook if their action becomes “deceptive, pretextual, or inconsistent with a provider’s terms of service....”(Executive Order, @ Sec. 2 (b)(ii)(A)).

Petitioner reported to Facebook that its platform was being used by people operating a fake account to bully, intimidate, harass and threaten him. Those people using the fake accounts also posted numerous false information about this Petitioner, as have been stated in this petition. Facebook ignored Petitioner’s report and failed to assure that its terms of service were followed accordingly while allowing the bullying, intimidation, harassment and threats against Petitioner to continue even to this day, against its terms of service. Facebook continues to allow these individuals operating a fake account contrary to its terms of service, to post numerous falsehoods against Petitioner.

This action (or inaction) of Facebook is clearly “inconsistent with a provider’s terms of service.” As such, this in clear contravention of what the executive order of May 28, 2020 served to prevent. This sort of action or inaction on the part of Facebook is the kind the executive order deprives of any liability that ordinarily would be pled by Facebook. Although, taking action consistent with its terms of service would not have made Facebook out to be seen as a publisher or a speaker of the content in the fake account, but more, Facebook’s failure to act consistent to its terms of service warrants that it face liability for the damages sustained by this Petitioner who has been harmed and is still being harmed by the individuals who have, and continues to violate Facebook’s terms of service.

A writ of certiorari should be granted so that this Court would address this monumental issue of Facebook’s inaction that the executive order says is inconsistent with its terms of service.

II. The Ninth Circuit Court of Appeals Deprived the Petitioner of his Due Process Right to be heard when they stated that Petitioner did not have facts supporting his argument of breach of contract while the facts were clearly stated in the brief.

In the Court of Appeals Decision of November 26, 2019, on page two, paragraph two, it held as follows: “Dismissal of Igbonwa’s breach of contract claim was proper because Igbonwa failed to allege facts sufficient to show that defendants violated any provision in the Terms of Service. See *Hamilton v. Greenwich Investors, XXVI, LLC*, 126 Cal. Rptr. 3d 174, 183 (Ct. App. 2011) (setting forth required elements to state a claim for breach of contract).” (Emphasis added). Petitioner in turn showed the Ninth Circuit Court, by way of supplying the facts alleged in the Amended Complaint to show that there indeed were sufficient facts alleged to show that Facebook and Mark Zuckerberg did violate the provisions in the terms of service. The Amended Complaint charged as follows: Facebook has rules that its users are supposed to go by, called Terms of Service.

2. One of the terms of service that Facebook legislated is called: [4] Registration and Account Security. It states as follows: Facebook users provide their real names and information, and we need your help to keep it that way. Here are some commitments you make to us relating to registration and maintaining the security of your account- “(1) You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission; (2) You will not create more than one personal account; (3) If we disable your account, you will not create another one without our permission.....”

3. There is also another important part of the Facebook legislation called: [3] Safety. It states as follows: We do our best to keep Facebook safe, but we cannot guarantee it. We need your help to keep Facebook safe, which includes the following commitments by you: “.... (6) You will not bully, intimidate, or harass any user; (7) You will not post content that: is hate speech,

threatening, or pornographic; incite violence; or contains nudity or graphic or gratuitous violence; (10) You will not use Facebook to do anything unlawful, misleading, or discriminatory; (12) You will not facilitate or encourage any violations of this Statement or our policies.” 4. Then there is yet another part of the legislation called: [5] Protecting Other People’s Rights. It states as follows: (1) You will not post content or take any action on Facebook that infringes or violates someone else’s rights or otherwise violates the law; (2) We can remove any content or information you post on Facebook if we believe that it violates this Statement or our policies.” (See Petitioner’s Opening Brief on appeal in the Ninth Circuit Court., id.)

After stating what terms of service that Petitioner considered pertinent to his situation, he then proceeded to state how it directly adversely affected him as follows:

These are the pertinent terms of service that Facebook has, and when one signs up with Facebook, these become part of the overall contract Facebook has with that person, including requiring users to report violations of any of these terms of service. Then Appellant, after stating all these terms of service, went into specifics to state how these terms were violated by a few unidentified users, as follows: “

On or about May of 2016, Facebook users named Emmanuel Chukwu and Don Chuks began to post falsehoods about Appellant on the wall of a group named “Alor London Great Elite Forum” which is administered by a man who calls himself Chukwudi Peace. All these names are aliases of people whose real names are unknown, and these falsehoods range from criminal activities that never took place to falsehoods about Appellant’s personal life, including plaintiff allegedly engaging in domestic disputes and violence against Appellant’s own family members, and other false posts in-between.

Some of the false accusations that these people post are as follows, (a) that Appellant is a money launderer. Appellant, however, has never been a money launderer; never been charged by any court, much less convicted of such crimes; (b) that plaintiff is a wife beater; Appellant has never been a wife beater, nor has he ever been charged with such a crime. Now with this false allegation, everyone looks at Appellant as a wife beater, (c) that Appellant was a scammer, yet there has never been anyone who has remotely accused Appellant of scamming him or her, nor has any charges ever been brought against him for scamming. Furthermore, there has never been any charges about Appellant defrauding his family members of anything, yet these imposters post all these defaming and libelous things to injure Appellant. Finally, Emmanuel Chukwu clearly and directly threatened to end my life.

On several occasions between May of 2016 April of 2018, Appellant tried to identify whom Emmanuel Chukwu, Don Chuks and Chukwudi Peace are, but has been continuously unable to unmask any of them.” (See Petitioner’s Opening Brief on appeal in the Ninth Circuit Court. id.)

The above paragraph indicated activities that took place on Facebook, and how each of those ran afoul of the terms of service of Facebook, and how he was seriously injured by them. Then on the net paragraph, Petitioner stated how Facebook’s inaction violated its own terms of service and directly contributed to Petitioner’s injuries, which, by the way, are still ongoing.

“On several occasions between May of 2016 and April of 2018 as well, Appellant used Facebook mechanism to report these people to Facebook so that these fictitious characters and their fake accounts and maliciously motivated forum would be addressed by Facebook because they were clearly violating the rules and regulations legislated by Facebook, but Facebook clearly ignored Appellant’s reports.” (See Appellant’s Opening Brief. Id.)

After Appellant showed that Facebook violated their terms of service, Appellant went ahead to show the damages to him, as follows: “In June of 2018, about two years after Appellant efforts to report to Facebook failed, Appellant went to his bank to renew his business loan portfolio, and had requested an enhancement on the loan from Twenty Million Naira (N20,000,000) to a Hundred Million Naira (N100,000,000), something that is usually swiftly enhanced.

This time, however, Appellant was confronted by the bank official about the issue of him being a scammer and a money launderer. Though Appellant rightfully denied such allegations, he was eventually informed that his business loan portfolio would no longer be maintained much less enhanced.

In August of 2018, about two years after Appellant’s efforts to report to Facebook failed, and after Appellant had already spent Seven Million Naira (\$22,950) (See Appendix C) and procured a form that he used to enter into the race for Senate in the Federal Republic of Nigeria

for the February, 2019 general election,(See Appendix D, list of Senate candidates) he was forced to step down by his party leaders and core supporters because his two opponents in the senatorial race had already began to campaign against him based solely on him being a wife beater, scammer and money launderer.

Aside from the loss of business funding, and political setback and blackball, Appellant is now clearly afraid for his life and for his family's life, especially not knowing the real identity of the one who issued the death threats. Facebook knows but is not telling." (See Petitioner's Opening Brief in the Ninth Circuit Court of Appeals. Id.)

So, not only did Petitioner succinctly lay out his facts which more than put the Respondents on notice as to what violations they committed, but Petitioner who is Pro se (See **Haines v. Kerner**, 404 US 519 - 1972), also met all the elements of breach of contract. See... "The essential elements of a breach of contract claim are: "(1) the contract, (2) plaintiffs' performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." (**Reichert v. General Ins. Co.** (1968) 68 Cal.2d 822, 830 [69 Cal.Rptr. 321, 442 P.2d 377].)"

The Ninth Circuit Court of Appeals overlooked these facts which were pled in the amended complaint as well as in Petitioner's opening brief on Appeal in the Ninth Circuit Court of Appeals. The contract was the terms of service which advised that one could report any violations of the terms of service; the plaintiff's performance was when Petitioner reported the violations of terms of service by unknown people using fake accounts to hurt others including Petitioner. And the damages were when Facebook violated their own terms of service by refusing to heed Petitioner's reports, and then the losses of Petitioner in his business and political future. This clear omission by the Ninth Circuit Court of Appeals warrants that a writ of

certiorari be granted so that the Ninth Circuit Court of Appeals would be instructed to correct the clear error.

- I. Whether the Ninth Circuit Court of Appeals' ruling in this case directly conflicted with its own ruling on the same argument in a different case that came before them.

In this Court's decision of November 26, 2019, on page three, it stated as follows: "We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009)." The Ninth Circuit Court of Appeals was referring to Petitioner's claim about Facebook, Inc.'s failure to warn users that there could be fake account holders that might portend to hurt other users. In **Doe v. Internet Brands, Inc.**, 824 F.3d 846 (9th Cir. 2016), the Ninth Circuit Court held that

§ 230 did not bar Doe's failure-to-warn claim because the claim did not treat **Internet Brands** as the "publisher or speaker" of third-party content on the website. **Internet Brands**, 824 F.3d at 850–51. Instead, Doe sought "to hold Internet Brands liable for failing to warn her about information it obtained from an outside source about how third parties targeted and lured victims through Model Mayhem." Id. at 851. Here as well, Petitioner faults Facebook for their failure to act on the report of fake accounts that they have full knowledge of. Instead, Facebook continued to encourage those fake accounts that are used to commit criminal acts such as cyberbullying and terroristic threats. In **Internet Brands**, the Ninth Circuit Court of Appeals said that Doe "does not seek to hold Internet Brands liable as a 'publisher or speaker' of content someone posted on the Model Mayhem website, or for Internet Brands' failure to remove content posted on the website." Id. The Ninth Circuit court of Appeals reasoned that the duty would not require Model Mayhem to delete any third-party content or affect content monitoring. Id. The court said a warning posted on the website or sent by email would suffice. Here as well, Facebook

addressing a fake account on its platform is not tantamount to removing contents posted or affect content monitoring because as per Facebook's terms of service, there should not be any fake accounts on its platforms anyway. A real account can have any content it wants, and it shouldn't concern Facebook because it's neither regarded as a publisher, a speaker nor a content provider. Petitioner argued that, like in Internet Brands, if Facebook had warned that there are fake accounts operating on their platforms, and that people should be mindful of that, then people can or most likely will take the contents of the fake accounts with a lot of grain of salt. If that happened, Petitioner's reputation would have stood a chance, that at least, the contents were coming from a fake account, and there has to be a reason someone would publish things on a fake account, because they could not stand behind the truth of those contents.

This claim came before the Ninth Circuit to hear and decide, and it again avoided deciding it. Assuming that the claim actually was not properly raised, which it was, the Ninth Circuit has recently ruled on a claim that was not properly raised in the opening brief. The Ninth Circuit decision not to rule on this credible claim went contrary to its own precedent. **See Varney v. Secretary of Health and Human Services**, 859 F. 2d 1396 (9th Circuit 1988). In **Varney**, the Ninth Circuit Court held that "As a general rule, we will not consider issues that a party raises for the first time in a petition for rehearing. **Escobar Ruiz v. Immigration and Naturalization Service**, 813 F.2d 283, 285-86 (9th Cir.1987). We recognize an exception, however, for cases involving extraordinary circumstances. *Id.* at 286. In **Escobar Ruiz**, for example, we granted rehearing in order to allow the government to make an argument it had not initially raised. We noted that our initial decision was the first to consider the question whether the Equal Access to Justice Act applies to immigration proceedings, and that numerous claims would be made in reliance on that decision. We said that allowing an incorrect statutory interpretation to stand as

controlling precedent "would constitute a disservice to all parties concerned." Id. We also observed that the government's failure to raise the issue initially was due to inadvertence or negligence, not willfulness. Id." (Emphasis added.)

This case shows that the Ninth Circuit Court hears claims that "had not [been] initially raised." Therefore, saying otherwise puts its decision in contradiction to an existing precedent in the Ninth Circuit Court of Appeals. Furthermore, this claim was raised in the amended complaint and in the opening brief. As such, the Ninth Circuit Court of Appeals should have ruled on it and granted relief.

Wherefore, Petitioner respectfully requests this Court to grant a writ of certiorari and return the case to the Ninth Circuit to conform with its own precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Uzoma Igbonwa

Date: June 15, 2020

PROOF OF SERVICE

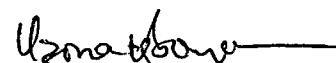
I, Uzoma Igbonwa, do swear or declare that on this date, June 15, 2020 as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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Telephone: 415 391 5400 Facsimile: 415 397 7188
Attorneys for Respondents, FACEBOOK, INC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on, **June 15, 2020**


By: Uzoma Igbonwa