No. _____

20-6333

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

IMMANUEL F. SANCHEZ,

Petitioner,

vs.

STATE OF CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF *CERTIORARI*

Immanuel F. Sanchez
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Los Angeles, CA 90063

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STATEMENT REGARDING ORAL ARGUMENT

Hearing is required by law in these proceedings. *See* 28 U.S.C. § 1915(a); *Coppedge v. United States*, 369 U.S. 438, 452 (1962) ("We heard oral argument."). The government cannot "affirmatively abuse its power" and deny Petitioner his fundamental right to hearing. "The power vested in a judge is to hear and determine, not to determine without hearing." *In re Buchman*, 123 Cal.App.2d 546, 560 (1954).

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF *CERTIORARI*

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under U.S. CONST. art. III, § 2 and 28 U. S. C. § 1254(1). Petitioner has a constitutional and statuary right to a hearing on the merits of a claim over which the Court has jurisdiction. "The petition for certiorari, pro se, sought reversal of the order of the Court of Appeals denying petitioner's motion for appeal in forma pauperis. ... Such an order is reviewable on certiorari." *Pollard v. United States*, 352 U.S. 354, 359 (1957) (quoting *Wells v. United States*, 318 U.S. 257 (1943)).

QUESTIONS PRESENTED

I. Whether a State that denies public health, medical care, and social services to a particular Citizen without affording him the opportunity to appeal the State's action denies the Citizen procedural and substantive due process in violation of the Fourteenth Amendment Due Process Clause.

II. Whether this denial of public health, medical care, and social services is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969).

III. Whether the dismissal of Petitioner's *in forma pauperis* complaint was an abuse of discretion.

IV. Whether the *in forma pauperis* statute, 28 U.S.C. § 1915 is "DEMONSTRABLY" unconstitutional in part, on its face and as applied to Petitioner.

LIST OF PARTIES

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: State of California, County of Los Angeles, Department of Social Services, Director William Lightbourne (as an individual and in his official capacity), Case Worker Donovan Sithan (as an individual and in his official capacity), Case Worker Arthur Daniels (as an individual and in his official capacity; El Monte Comprehensive Health Center, Dentist Donna Raja (as an individual and in her official capacity), Dentist Leandro S. Arca (as an individual and in his official capacity), Dentist Jonathan Y. Hsu (as an individual and in his official capacity); West Coast Dental Services, Dentist Julio Iniquez (as an individual and in his official capacity); Los Angeles County+USC Medical Center, Doctor Richard Bracken (as an individual and in his official capacity), Dentist Armen Pezeshkian (as

an individual and in his official capacity); Herman Ostrow School of Dentistry of University of Southern California, Dentist Talley Marlene (as an individual and in her official capacity); Clinic Msr. Oscar A. Romero, Dentist Maria Marzan Marlene (as an individual and in her official capacity); and Wilshire Center Dental Group, Dentist Gregory Kaplan (as an individual and in his official capacity).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Preamble, Article III, Article VI, and the First, Ninth, Eleventh, Thirteenth, and Fourteenth Amendments to the Constitution of the United States of America are involved.

The statutes involved are: (i) Sections 1981(a), 1983, and 1985(3), Title 42, United States Code; (ii) Sections 1951 and 1964(c), Title 18 United States Code; (iii) Sections 454, 955, 1291, 1331, 1343(a)(1)(3), 1367(a), 1391(b), 1915, 2201, 2202, and 2403(a), Title 28, United States Code; and (iv) Subsection (a)(4), Section 68632, California Government Code.

STATEMENT OF THE CASE

On October 22, 2019, *pro se* Petitioner commenced a civil action in the United States District Court for the Central District of California pursuant to the Civil Rights Acts, 42 U.S.C. §§ 1981, 1983, 1985(3), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(c), against the Respondents alleging intentional fraud, bad faith, gross negligence and deliberate indifference, conspiracy to violate and violation of

civil rights, violation of procedural and substantive due process of law, violation of equal protection, and conspiracy to violate and violation of the RICO Act.

Briefly stated, the complaint alleged that the California State and Los Angeles County officials administering the Medi-Cal program denied aid without affording Petitioner a hearing with the Department of Social Services before an independent state hearing officer at which the applicant may appear personally, offer oral evidence, confront and cross-examine witnesses against him, and have a record made of the hearing.

Moreover, clerk of the court Kiry K. Gray provided to the public, including Petitioner, with the *Instructional Guide and Forms for Submitting Motions*, but prepared and provided him with a different form for filing a motion to commence suit *in forma pauperis* ("IFP") that excludes the courtroom, time, and judge filler space. *See* Form CV-60. Petitioner did not use Form CV-60, instead, he prepared a "MOTION to Commence Suit In Forma Pauperis" and deputy clerk Chris Sawyer filed the "MOTION" along with the "COMPLAINT FOR VIOLATIONS OF THE CIVIL RIGHTS ACT" in the Court but failed and refused to permit issuance and service of process of the "COMPLAINT" and summons after Petitioner requested service.

Thereafter, deputy clerk Estrella Tamayo in secret, one-sided determination, or without notice or a hearing assigned two (2) different Court judges to hear Petitioner's case, with two (2) different courtrooms, and two (2)

different calendars contrary to the self-calendaring procedures of the District Court's website of either judge as only one (1) judge in (1) court with one (1) calendar is required for hearing. Said deputy clerk assigned the case to the calendars of district court judge John F. Walter and magistrate judge Alka Sagar and a copy of the "NOTICE OF ASSIGNMENT" appears at Appendix C.

On October 28, 2019, in secret, one-sided determination, or without notice or a hearing, district court judge John F. Walter filed with the Court an "Order vacating hearing" and a copy of the order appears at Appendix D.

On November 12, 2019, Petitioner filed with the Court a "MOTION to Disqualify the Magistrate Judge."

On November 15, 2019, in secret, one-sided determination, or without notice or a hearing, magistrate judge Alexander F. MacKinnon filed with the Court a Recommendation that Petitioner be denied IFP status and that proceedings be terminated and a copy of the "RECOMMENDED" disposition appears at Appendix B. In filing the Recommendation, that Petitioner's "MOTION to Commence Suit In Forma Pauperis," be denied, the magistrate judge did not file any proposed findings of fact and did not serve or mail a copy of the recommended disposition to Petitioner. Magistrate judge Alexander F. MacKinnon neither held a hearing nor reviewed the actual evidence attached to the "COMPLAINT." Immediately thereafter, district court judge Otis D. Wright, II received and accepted the unserved and unfounded Recommendation and denied Petitioner IFP status and

immediately dismissed his case by a summary order before process issued and a copy of the "ORDER (1) DENYING REQUEST TO PROCEED IN FORMA PAUPERIS AND (2) DISMISSING COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION" appears at Appendix B.

On November 26, 2019, in secret, one-sided determination, or without notice or a hearing, district court judge Otis D. Wright, II filed with the Court an "ORDER DENYING ... MOTION FOR RECUSAL OF ... MAGISTRATE JUDGE" and a copy of the denial order appears at Appendix E. Immediately thereafter, the said judge filed an "ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST PLAINTIFF" solely because Petitioner filed the "MOTION to Disqualify the Magistrate Judge," and a copy of the order to show cause appears at Appendix E.

On November 27, 2019, Petitioner filed with the Court a "MOTION TO VACATE THE ORDER DENYING HEARING AND OBTAIN RELIEF FROM ILLEGAL AND UNCONSTITUTIONAL PROCEEDINGS."

On December 4, 2019, in secret, one-sided determination, or without notice or a hearing, district court judge Otis D. Wright, II filed with the Court an "ORDER DENYING PLAINTIFF'S MOTION TO VACATE THE ORDER" and a copy of the denial order appears at Appendix F.

On December 20, 2019, the sanction was imposed despite Petitioner's "RESPONSE to Order" to Show Cause and "REQUEST FOR JUDICIAL NOTICE in Support" thereof filed on December 16, 2019, showing that an

"ellipses are perfectly respectable for legal writers, and don't raise suspicions that the writer has tampered with the meaning. In fact their very presence bespeaks care." *See The Redbook, A Manuel On Legal Style* 4th ed., by Bryan A. Garber, Editor in Chief, Black's Law Dic., The acknowledged authority for legal writers. A copy of the "MINUTES" appears at Appendix G.[1]

In addition, Petitioner filed with the Court a "NOTICE OF APPEAL" from the "ORDER (1) DENYING REQUEST TO PROCEED IN FORMA PAUPERIS AND (2) DISMISSING COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION." At the same time, Petitioner filed a "MOTION [to] Proceed on Appeal In Forma Pauperis."

On January 2, 2020, in secret, one-sided determination, or without notice or a hearing, district court judge Otis D. Wright, II filed with the Court an order denying Petitioner's "MOTION [to] Proceed on Appeal In Forma Pauperis" and a copy of the denial "ORDER" appears at Appendix H.

On January 31, 2020, Petitioner filed with the Court of Appeals a "Response to Motion or Court Order," "Motion and Affidavit for Permission to Proceed In Forma Pauperis," and "STATEMENT THAT APPEAL SHOULD GO FORWARD."

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[1] Suffice to say that Petitioner claimed that district court judge Otis D. Wright, II appeared to be to old and mentally incompetent, exhibiting signs of disability. Judge Wright stared off into the courtroom. His mental faculties appeared to be impaired to the point that he either cannot understand the proceedings before him or he is far gone that he is allowing an assistant to do his thinking for him. Judge Wright is a crazy, deranged, and mentally incompetent old man. These claims are not in any way, shape, or form conduct that is "verbally abusive." Petitioner has a fundamental constitutional "right to a tribunal both impartial and mentally competent to afford hearing." *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912), *Tanner v. United States*, 107 S.Ct. 2739 (1987).

On February 27, 2020, in secret, one-sided determination, or without notice or a hearing, circuit judges William C. Canby, Ronald M. Gould, and Paul J. Watford filed an order denying Petitioner's "Motion and Affidavit for Permission to Proceed In Forma Pauperis," and dismissing the appeal and a copy of the denial or dismissal "ORDER" appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on September 16, 2020 and a copy of the order denying rehearing appears at Appendix I.

REASONS FOR GRANTING THE PETITION

I. State's action denying public health, medical care, and social services violates procedural and substantive due process in violation of the Fourteenth Amendment Due Process Clause.

(a) Deprivation of "Procedural" Due Process

Petitioner's "COMPLAINT" specifically alleged that: "The Fourteenth Amendment of the United States Constitution commands that "No State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. In defiance of federal law, the California State intentionally deprived Plaintiff of life, liberty, and property, without due process of law.

To begin, without health one cannot have "enjoyment of life," one will only suffer physical pain, emotional trauma, and mental anguish due to one's ongoing health injury. The California State's actions, decisions, practices, policies, laws, statutes, ordinances, regulations, customs, and usages to

prevent remedy to a Citizen's serious medical problem violates Plaintiff's right to "life."

Next, the term "liberty" as used in the "due process" clause denotes not only the right of the Citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the Citizen to be free from the infliction of unnecessary pain; to be free in the enjoyment of good health; to use all his faculties; to live in a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity; to be free to use his powers of mind and body in any lawful calling; to acquire and possess useful knowledge and property; to pursue any avocation or profession; to worship God according to dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Stated differently, "liberty" safeguarded by the "due process" clause is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people.

Lastly, Medi-Cal benefits are protectable "property interest" under the "due process" clause. Here, Plaintiff was falsely deprived of use of state monies for necessary health treatments causing him immediate and irreparable damage to his health. Those health treatments and the state funds to pay for health care, are constitutionally protected property interest and they have been infringed, abridged, and violated by the California State.

This deprivation of Plaintiff's constitutionally protected interests in "life, liberty, or property" without notice or a hearing or any process of law "shocks the conscious" and constitutes a violation ... of Plaintiff's Fourteenth Amendment right to procedural due process of law. The violation of this constitutional provision is also a violation of 42 U.S.C. § 1983.

(b) Deprivation of "Substantive" Due Process

Petitioner further alleged that: "[T]he Due Process Clause ... was intended to prevent government 'from abusing its power, or employing it as an instrument of oppression,' 'to secure the individual from the arbitrary exercise of the powers of government,' 'to prevent governmental power from being used for purposes of oppression,' and to prevent 'affirmative abuse of power.'" *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 196 (1989)." Substantive due process prevents government from oppressing Petitioner by arbitrarily depriving him of a fundamental right. *See Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996).

The California State willfully oppressed Petitioner by arbitrarily depriving him of his fundamental constitutional right to health care. "Fundamental rights," of kind protected by substantive component of Due Process Clause, are those rights created by the Constitution. *See Greenbriar Village, L.L.C. v. Mountain Brook, City*, 343 F.3d 1258, 1262 (11th Cir. 2003).

Petitioner was arbitrarily deprived of his fundamental right created by the Constitution of the United States of America for the purpose of willful

oppression in violation of his Fourteenth Amendment substantive due process right not to be subjected to oppressive action by the government.

Petitioner's fundamental right to health care is guaranteed to him and protected by the Constitution, laws, and treaties of the United States of America. [2] The right to public health, medical care, and social services is

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[2] The United Nations Charter, a treaty ratified by the United States of America, is part of the supreme law of this land. Article 25 of the United Nations' Universal Declaration of Human Rights (1948) states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself, including ... medical care and necessary social services." While not a treaty itself, the Declaration was explicitly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" appearing in the United Nations Charter, which is binding on all member states. The 1968 United Nations International Conference on Human Rights advised that the Declaration "constitutes an obligation for the members of the international community" to all persons.

The Declaration has served as the foundation for two binding UN human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under Art. 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, the "States Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Of consequence, Plaintiff is entitled to assert the rights under the treaty since the actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages of the California State are contrary to the international agreement and treaty made under the authority of the United States of America.

In fact, the California State denied Petitioner necessary health or medical care and social services in violation of his human right to health care secured to him and protected by the treaties of the United States of America. The treaty constitutes the supreme law of the land and not the actions, decisions, practices, policies, laws, statutes, regulations, customs, and usages of the California State. The treaty overrides the power of the State of California. In fact, the treaty has supremacy over the California State constitution and laws because the treaty is superior. It is the declared will of the people of the United States of America that every treaty made by the authority of the United States of America shall be superior to the constitution and laws of any individual state.

Fundamental principle of supremacy of law, that crux of constitutional government, requires that all public officials obey mandates of Constitution and valid treaties made under the authority of the United States of America. The California State may not make and enforce actions, decisions, practices, policies, laws, statutes, ordinances, regulations, customs, and usages that are contrary to federal law. The California State has an obligation, under the supremacy clause, to protect federally guaranteed civil and human rights as zealously as would federal authorities of the United States of America. The right of the people to be secure, safe, and healthy in their persons, shall not be violated. If the people have health or medical needs which are not being met, it is society's responsibility to meet them. This is the "supreme Law of the Land" and cannot be curtailed and circumvented by the California State.

rooted in Amendments 1, 4, 5, 8, 9, 13 and 14, along with penumbras of express provisions, and the Declaration of Independence.

"The Declaration of the Continental Congress concisely articulates that the inalienable rights of man come from the hand of their Creator, and not as a gift from a benign government. Thomas Jefferson included the health of a free people as a specific right in 'our pursuit of happiness.' ... The health of the people was in the minds of our forefathers when they wrote the Preamble of the Constitution of the United States: 'We the People of the United States, in Order to form a more perfect Union, * * * promote the general Welfare * * *.' ... ' The health of free people is forever present in the minds of free men." *Ellis v. City of Grand Rapids*, 257 F.Supp. 564, 572 (1966) (Emphasis added).

"From its foundation the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow

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The actions, decisions, practices, policies, laws, statutes, ordinances, regulations, customs, and usages of the California State denying Petitioner necessary medical care and social services must yield to the treaty as they are inconsistent with and impair the policy and provisions of the treaty in violation of the "supreme Law of the Land" clause of Article VI of the Constitution of the United States of America.

from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.' " *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970).

The Preamble of the Bill of Rights of the United States of America provides "in order to prevent misconstruction or abuse of its power, that further declaratory and restrictive clauses should be added." Although the right to health care is not specifically enumerated in the Constitution of the United States of America, such right exists as other rights retained by the people under the Ninth Amendment to the Constitution. The Ninth Amendment provides, "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." *See* U.S. CONST. amend. IX.[3] In fact, Petitioner's fundamental personal right to health care is implicitly guaranteed to him and protected by the Ninth Amendment because such right to health care is not set forth in the Constitution. Rather than enunciating a particular affirmative right, the Ninth Amendment servers to protect other fundamental rights that are not set forth in the Constitution of the United States of America.

The fundamental right to health care is deeply rooted in this Nation's history and tradition, and in the conscience of the good decent American

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[3] The fundamental personal right to privacy is not explicitly mentioned in the Bill of Rights, but such right exists as other rights retained by the people under U.S. CONST. amend. IX. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). And any state law, regulation, statute, policy, custom, and usage of the State that denies or abridges the rights retained by the people under U.S. CONST. amend. IX is invalid and void. *Id.*

people, and such right is implicit in the concept of ordered liberty, such that neither life, liberty, nor property would exist if health was sacrificed.

In January 11, 1944, United States President Frank Delano Roosevelt crafted his "Second Bill of Rights." He declared 'freedom of want' to be one of four essential liberties for human security. His definition of freedom included, "the right to adequate medical care and the opportunity to achieve and enjoy good health." State of the Union Message to Congress, Presidential Library and Museum.

In January 7, 1965, President Lyndon B. Johnson in a special message to Congress proclaimed: "Our first concern must be to assure that the advance of medical knowledge leaves none behind. We can— and we must — strive now to assure the availability of and accessibility to the best health care for all Americans, regardless of age or geography or economic status." U.S. Code Congressional and Administrative News, No. 1, Feb. 5, 1965, at 13-14, 16, 21.

In 1989, the largest American health care organization, the American Medical Association, scribed a document on "Patient's Bill of Rights" that includes a statement that patients have a "right to essential health care."

In *Brown v. Plata*, 563 U.S. 493, 510-11 (2011), Justice Kennedy declared, that indigent American Citizens "retain the essence of human dignity inherent in all persons," and human dignity includes the right to health care.

In February 17, 2012, a legislator from the State of New Mexico, stated in an editorial, "Health care is a fundamental right that is an essential safeguard of human life and dignity."

In September 13, 2017, United States Senator Bernie Sanders and 15 Senate co-sponsors prepared and submitted the Medicare for All Act of 2017, S. 1804-115th Congress (2017-2018), which states: "Every individual who is a resident of the United States is entitled to benefits for health care services. ... The beneficiary has the right to have services provided by health providers for whom payment would be made under this Act."

Petitioner's right to health care is recognized by the Ninth Amendment of the Constitution of the United States of America as it is recognized by teachings of history and basic values that underlie the American society and is encompassed within the "due process of law" clause of the Fourteenth Amendment and it is thus fully applicable against the California State under 42 U.S.C. §§ 1983, 1985(3).[4]

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[4] The pertinent part of Section 1 of the Fourteenth Amendment provides "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And section 5 expressly empowers Congress to enforce by appropriate legislation the provisions of the article. 42 U.S.C. § 1983, provides in presently pertinent part that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, ... subjects, or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law." And 42 U.S.C. § 1985(3), provides among other things that "if two or more persons in any State conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, and if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right and privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of

II. State's action denying public health, medical care, and social services is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Petitioner is an indigent suffering a dental and health injury and the California State and Los Angeles County and its medical facilities intentionally denied him necessary health or medical care pursuant to official policies.

Under the law, "the individual county governments are charged with the mandatory duty of providing necessary hospital and medical care for their indigent." *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 252 (1974). But the California State policy requires an indigent to pay money for medical care and services, money that he does not have because he is destitute.

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damages occasioned by such injury or deprivation, against any one or more of the conspirators."

The right to the enjoyment of life, liberty, and property does not find its source in U.S. Const. Amend. XIV, § 1. That constitutional provision was not designed to create or vest rights of that nature. It was intended to safeguard and protect the individual against deprivation of such rights under color of State authority, without due process and equal protection. But § 1983 does not undertake merely to protect rights and privileges derived from the Constitution of the United States of America. It makes unlawful the willful deprivation under color of State authority of any right, privilege, or immunity secured or protected by the Constitution. It brings within its ambit the willful deprivation under color of State authority of any right, privilege, or immunity which is guaranteed by the Constitution. It does not include wrongful acts of officers of the state or county solely in their personal pursuits. But it does bring within its ambit any willful deprivation under color of State authority of any right, privilege, or immunity which is guaranteed by the Constitution of the United States of America. And the denial of necessary health care or the cruel and unusual treatment of indigent Citizens by state and county officials, not in their personal pursuits but under color of official authority solely for the purpose of destroying his dental and general health, constitutes deprivation of rights, privileges, and immunities guaranteed by the Constitution, laws, and treaties of the United States of America. Accordingly, the defendants, and each of them, are liable to Plaintiff's for damages caused by such deprivation or injury under § 1983, and he may recover monetary damages under § 1983 and § 1985(3).

The Respondents refused to admit Petitioner to its public hospital, clinic, or medical facility solely because he is indigent. There is no health or medical care for the indigent in the California State and Los Angeles County. This requirement for providing medical care to indigents violates the Equal Protection Clause. The large money payment requirements for providing medical care to indigents created two classes of needy residents indistinguishable from each other except that one is composed of residents who can and have paid money for medical care and second class of residents who cannot afford to pay for medical care. On the basis of this sole difference the first class was granted medical care and second class was denied medical care upon which may depend the ability to obtain the very means to subsist.

This classification impinges on Petitioner's constitutionally guaranteed and protected right to be free from slavery or involuntary servitude and operates to penalize those persons who exercised their constitutional right of health care. The California State policy is unconstitutional and invalid. The policy penalizes Petitioner for his indigency and medical need. What would be unconstitutional if done directly by the California State can no more readily be accomplished by a county at State's direction. The policy impinges on Petitioner's fundamental constitutional right to be free from slavery or involuntary servitude. The policy is a penalty upon the exercise of the constitutional right of health care. The denial of medical or health care is done intentionally to coerce or force indigents to work or labor for oppressive

hours, salary, working conditions, or treatment in order to pay money for the necessary health or medical care, enslaving the residents of the California territory.

The denial of the basic "necessities of life," a fundamental constitutional right is a penalty. "[M]edical care is ... 'a basic necessity of life' to an indigent. ... It would be odd ... to ... deny him the medical care necessary to relieve him from the [pain] that attend his [medical condition]." *Memorial Hospital v. Maricopa County*, 415 U.S. at 259-60. Petitioner is an indigent Citizen who required continued medical care for the preservation of his dental and general health and well being, even if he did not require immediate emergency care.

The State could not deny an indigent Citizen care just because, although in a lot of pain, he was not in immediate danger of life. To allow a serious medical condition, to go untreated is to subject the sufferer to the danger of substantial and irrevocable deterioration in his health. Medical conditions, if untreated become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.

The right of health care must be seen as insuring all residents the same right to health care in the States to which they reside as are enjoyed by other residents. The State of California's requirement for medical care

penalizes indigents for exercising their right to health care. Accordingly, the classification created by the financial requirement is unconstitutional. *Id.*, at 261-62.

III. The dismissal of Petitioner's *in forma pauperis* complaint was an absolute abuse of discretion giving right to *certiorari* review

"Construing petitioner's ... pleading liberally, as *Haines v. Kerner*, 404 U.S. 519 (1972), instructs the federal courts to do so in *pro se* actions, it states a cause of action. ... [T]he Court of Appeals or the District Court; both courts relied solely upon erroneous legal grounds for dismissing the complaint." *Boag v. Arizona*, 454 U.S. 364, 365 (1982).

In *Nietzke v. Williams*, 490 U.S. 319, 327 (1989), it was held, "a court may dismiss a claim as factually frivolous **only** if the facts alleged are 'clearly baseless.' " *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (Emphasis mine). Under the "clearly baseless" guidepost Petitioner's "COMPLAINT" cannot be dismissed because the factual allegations are supported, substantiated, and corroborated by real and undeniable documentary and testimonial evidence. The dismissal was clearly erroneous and an absolute abuse of discretion.

Additionally, "[t]he district court's equating failure to state a claim with frivolousness was error." *Adams v. Hansen*, 906 F.2d 192, 193 (5th Cir. 1990); *Nietzke v. Williams*, 490 U.S. at 322. The district court committed abuse of discretion when it made this error.

Evidently, the dismissal of both courts was "clearly erroneous" under

Boag, *Nietzke*, *Denton*, and *Adams*. The dismissal was the result of extreme bias against Petitioner and constitutes an absolute abuse of discretion.

The dismissal of both courts displayed a deep-seated antagonism, animosity, or antipathy towards Petitioner evidencing extreme bias. The judicial rulings are egregiously erroneous and demonstrated that both courts intentionally committed fraud and malfeasance, violated Petitioner's fundamental constitutional rights to proceed *in forma paueris* and to due process of law, and disregarded the law. Both courts acted beyond their lawful authority with knowledge that its actions were beyond its authority and with conscious disregard for the limits of its authority. The actions of both courts were part of a pattern of failing to ensure the fundamental rights of *pro se* litigants appearing *in forma pauperis* and constitute an absolute abuse of discretion giving right to *certiorari* review.

Indeed, notifications required by Rule 29.4(b) have been made. On October 22, 2019, Petitioner filed a notice of constitutional challenge to federal statute pursuant to 28 U.S.C. § 2403(a) bringing into question the constitutionality of the IFP statute, 28 U.S.C. § 1915(e)(2), the very statute the judicial officers are attempting to enforce, and both courts **ignored** their mandatory duty to certify such fact to the Attorney General. *Wallach v. Lieberman*, 366 F.2d 254, 258 (2nd Cir. 1966) ("certification is mandatory."); *Merill v. Addison*, 763 F.2d 80, 82 (2nd Cir. 1985) ("the obligation to certify rests with the court, not with the parties. ... [T]he notice [is] not ...

discretionary. ... Certification is thus a duty of the court that should not be ignored.") (Emphasis added); *Pleasant-El v. Oil Recovery Co.*, 148 F.3d 1300, 1302 (11th Cir. 1998) ("wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General.").

Both courts failed to follow the statutory requirements for due process in constitutional challenge to federal statute proceedings under the authority of *Wallach*, *Merill*, and *Pleasant-El* and intentionally committed malfeasance, displaying extreme bias against Petitioner.

IV. The *in forma pauperis* statute, 28 U.S.C § 1915 is "DEMONSTRABLY" unconstitutional in part, on its face and as applied to Petitioner.

On its face § 1915(e) is unconstitutional because it considers factors that are not germane to the eligibility requirements set out in § 1915(a) and fails to consider important factors that are germane to the statutory purpose, and constitutes, as a matter of law, a subterfuge to perpetrate a fraud, avoid personal liability under 42 U.S.C. § 1983 or to evade consideration of a federal issue and the IFP requirements under § 1915(a), which are: (1) process issued and served; (2) notice and hearing of any motion thereafter made by defendant or the court to dismiss the complaint and the grounds therefor, *Potter v. McCall*, 433 F.2d 1087 (9th Cir.1970); *Harmon v. Superior Court of California*, 307 F.2d 796; and (3) proceeding to final judgment against the defendant. *In re Marriage of Reese*, 73 Cal.App.3d 120, 125 (1977)

(quoting *Boddie v. Connecticut*, 401 U.S. 371 (1971)).

Cal. Gov. Code, § 68632, subd. (a)(4), protects the same right and does not consider all of the factors detailed in § 1915(e). Furthermore, "[t]he purpose of § 1915 is to provide an entre, not a barrier, to the indigent seeking relief in the federal court." *Souder v. McGuire*, 516 F.2d 820, 823 (3rd Cir. 1975); *Jones v. Zimmerman*, 752 F.2d 76, 79 (3rd Cir. 1985). In fact, § 1915(e) is at odds with the very purpose of § 1915(a) because it creates a barrier to indigent seeking relief in the federal court contrary to the purpose of the IFP statute under *Jones* and *Souder*. § 1915(e) creates a barrier precluding access all together that impair an indigent's ability to enter the door of the courthouse in pursuit of legitimate grievances.

The filing fee requirements are a barrier to indigent accessing the courts because he cannot afford to pay for the filing fee. Even though the case is palpably meritorious, the indigent is required to pay the filing fee. § 1915(e) permits judicial officers to "automatically" dismiss the indigent's meritorious complaint for the purpose of imposing the filing fee. § 1915(e) codifies judicial absolutism, immunity, or fraud as a legitimate tactic to dismiss the indigent's legitimate claims and cheat or defraud him of his property. Indigents' meritorious legal claims are dismissed as frivolous or failure to state a claim.

§ 1915(e) prohibits indigents from accessing the courts to protect their rights. Indigents are required to pay to redress meritorious legal claims. § 1915(e) prevents all indigents from accessing courts. § 1915(e) precludes

indigents from enjoying IFP status. § 1915(e) is thus constitutionally infirm as it operates to cause a First Amendment violation.

(1) Violation of First Amendment Right to Proceed *In Forma Pauperis*

§ 1915(e) violates Petitioner's First Amendment right to commence or litigate a meritorious civil action, suit, appeal, or proceeding in the manner of pauper IFP because it hinders his efforts to pursue his legal claims. Indigent Petitioner is seeking vindication of his fundamental rights. Civil rights actions directly protect an American Citizen's most valued rights. *See Bounds v. Smith,* 430 U.S. 817, 827 (1977). Civil rights actions under 42 U.S.C. § 1983 vindicate basic constitutional rights.

Petitioner's "COMPLAINT" was brought pursuant to § 1983 and alleged violations of his fundamental constitutional rights under the First, Ninth, Thirteenth, and Fourteenth Amendments of the Constitution of the United States of America. Petitioner contends that, based on United States Constitution, statutes, and court rules, he has a life, liberty, or property interest in his civil proceedings, and by denying him equal access to the courts and fair hearing of his claims, the Respondents have deprived him due process.

The Respondents' actions deprived Petitioner of access to the courts and the possession and use of monies received through litigation of his respective personal injury causes of action. Those causes of action, and funds collected upon their liquidation are constitutionally protected interest.

United States of America's Constitution, statutes and court rules give rise to a life, liberty, or property interest that is entitled to procedural due process protection. Procedural due process is a fundamental right. Petitioner is seeking vindication of a fundamental constitutional right through a § 1983 action, and he has alleged the correct type of legal claim for a *prima facie* First Amendment violation within the meaning of *Bounds v. Smith.*

Furthermore, the government's enforcement of § 1915(e) provisions, would deny Petitioner IFP status in the instant proceeding and would effectively bar him from pursuing his meritorious legal claims on *certiorari.* Petitioner does not have the money necessary to prepay the filing fee. Petitioner is not employed, and he has no income. Petitioner has no money. Petitioner has no financial source of funds for him to pay any fee for filing cases in this court or elsewhere. Money is non-existent for all practical purposes. § 1915(e) prohibits Petitioner from proceeding IFP and totally denies him access to court in violation of his Frist Amendment right of access to court.

Denying IFP status prevents indigents from accessing the courts because they are required to pay the filing fee in order for the courts to exercise jurisdiction over their valid constitutional claims. Indigents have no money, and there is no guarantee that they will have income. § 1915(e) infringes on the indigent's right of access to the courts because he cannot pursue his claim in court. Court fees must be waived because they prevent

litigants from vindicating basic fundamental rights. The First Amendment right to court access provides the means for ensuring that access rather than the ends in themselves. The IFP status is a means for ensuring that an indigent litigant is guaranteed First Amendment right of court access, and in Petitioner's action or proceeding, it is constitutionally required. The First Amendment right of access to the courts requires that an indigent litigant be given IFP status.

§ 1915(e) does not allow indigent litigants to file a civil action, appeal, or proceeding and proceed to judgement against the defendants-appellants-respondents without the payment of court fees. Indigent litigants cannot be denied a waiver of court fees. § 1915(e) prevents an indigent from filing civil actions, appeals, or writs, and enjoying IFP status.

Significantly, § 1915(e) burdens Petitioner's access to the courts because the underlying lawsuit implicates a fundamental interest requiring a waiver of filing fees. Petitioner's right to access the courts has been disturbed in that he is being barred from bringing his present § 1983 claim in federal court as indigent litigant to litigate his federal constitutional causes of action in the manner of a pauper IFP.

(2) Violation of Fifth Amendment Right to Notice or a Hearing

§ 1915(e) violates Petitioner's Fifth Amendment right to notice or a hearing because it denies him an opportunity for hearing. A hearing without notice is not a hearing. The failure to provide notice circumvented Petitioner's

Fifth Amendment right to be present, and to present evidence at hearing at which the IFP status is at issue.

"Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1971). It is improper to deny an IFP motion without a hearing based on the judicial officer's *ex cathedra* determination. *See Cruz v. Superior Court*, 120 Cal.App. 175, 189 (2004). § 1915(e) permits the district judge to determine case without hearing or to conduct secret, one-sided determinations of facts decisive of rights.

"Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law. It shuts out all interference not according to established principles of justice, one of them being the right and opportunity for a hearing. ... Judicial absolutism is not part of the American way of life. The odious doctrine that the ends justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without hearing." *In re Buchman*, 123 Cal.App.2d 546, 560 (1954).

As a matter of law, § 1915(a) requires that the indigent be accorded a hearing in which he may be heard, and where he may defend, enforce, and protect his personal rights. *See e.g. Spears v. McCotter*, 766 F.2d 179, 180 (5th Cir. 1985) ("His testimony before the magistrate judge."); *Cay v. Estelle*, 789 F.2d 318, 320 (5th Cir. 1986) ("An evidentiary hearing was held.");

Coppedge v. United States, 369 U.S. 438, 452 (1962) ("We heard oral argument."). "[T]he judge's feeling that the case is probably frivolous does not justify by-passing that right. [Indigent] is entitled ... to be heard." *Harmon v. Superior Court*, 307 F.2d at 798.

The purpose of the hearing is to make a record to protect the *pro se* indigent and to enable the court to make an informed decision regarding the merit of the action by reference to the reality of the situation rather than by speculating as to the nature of the claim. *See Cay v. Estelle*, 789 F.2d at 323. As applied, § 1915(e) is constitutionally invalid as it deprives the indigent litigant of his Fifth Amendment right to a hearing. The Fifth Amendment right to a meaningful opportunity to be heard must be protected against denial by § 1915(e) as it operates to destroy it for indigents. *See e.g. Boddie v. Connecticut*, 401 U.S. 371, 379-80 (1971).

(3) Violation of Fifth Amendment Right to be Free from Fraud

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from fraud by any person exercising the authority of the United States of America. *Boyce's Executors v. Grundy*, 28 U.S. 210, 220 (1830) ("the law ... abhors fraud."). *Fraus legibus invisissima*, "Fraud is most hateful to law." § 1915(e) legalizes fraud permitting judicial officers to freely and openly practice fraud and intentionally, repeatedly, and systematically file false statements, writings, or documents in the courts to defraud or cheat the indigent of his property, or to obtain judgment of dismissal of his meritorious case. *See e.g.*

Sanchez v. California, Civil Action No. 2:18-cv-06107-R (AFM) (twenty-one (21) false statements filed in the district court), Appeal No. 18-56153 (9th Cir. 2018) (two (2) false statements filed in the court of appeals); *Sanchez v. Real*, No. 2:19-cv-06015-MWF-RAO (eleven false statements filed in the district court), Appeal No. 19-56097 (two false statements filed the court of appeals).

The record shows that district court judge Otis D. Wright, II and magistrate judge Alexander F. MacKinnon filed orders in the district court with intentionally false statements of fact and law.[5] On the other hand, the

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[5] In the Denial-Dismissal Order filed 11/15/2019 and entered 12 days later on 11/27/2019, (Doc. No. 17), magistrate judge Alexander F. MacKinnon falsely stated: (1) that the "District Court lacks jurisdiction," and (2) that "PLAINTIFF ... Fails to state a federal claim on which relief may be granted." Denial-Dismissal Order, cover-page CV-73.

In the Denial-Dismissal Order filed 11/15/2019 and entered 12 days later on 11/27/2019, (Doc. No. 17), district judge Otis D. Wright, II falsely stated: (1) that "Once again, plaintiff's Complaint lacks an arguable basis in either fact or law to raise a federal civil rights claim." *id.*, at 2, lines 18-19; (2) that "again, plaintiff's factual allegations fall far short of raising a purported right to relief on any federal claim." *id.*, at 2, lines 20-22; (3) that "the Court does not have jurisdiction over plaintiff's claims against California." *id.*, at 3, lines 17-18; (4) that "employees of a private university are not acting under color of state law." *id.*, at 4, line 8; (5) that "A local government entity such as the County []may not be sued under § 1983 for an injury inflicted solely by its employees or agents." *id.*, at 4, lines 17-18; (6) that "the Complaint fails to set forth any factual allegations that a specific policy or custom promulgated by the County was the 'actionable cause' of a specific constitutional violation." *id.*, at 4, lines 23-25; (7) that "Plaintiff's complaint fails to state any factual allegations." *id.*, at 5, lines 3-4; (8) that "neither the Fourteenth Amendment nor any other part of the United States Constitution protects a 'fundamental right to health care." *id.*, at 5, lines 12-13; (9) that "Plaintiff's Complaint alleges nothing that constitutes racketeering activity." *id.*, at 6, lines 6-7; (10) that "Plaintiff's ... First Amendment claim for 'right to privacy of mind' is frivolous." *id.*, at 6, lines 8-9; (11) that plaintiff's factual allegations lack an arguable basis in fact or law to assert a federal civil rights claim against the named defendants." *id.*, at 6, lines 13-14; (12) that "the Court may dismiss a case summarily." *id.*, at 6, line 19; (13) that "plaintiff's factual allegations here fail to plausibly allege that any named defendant acted under color of state law to deprive him of a right guaranteed under the United States Constitution or a federal statute." *id.*, at 7, lines 3-4; (14) that "the Court lacks subject matter jurisdiction over the claims in this action." *id.*, at 7, line 5.

In the Denial Order filed 11/26/2019 and entered 1 day later on 11/27/2019, (Doc. No. 18), district judge Otis D. Wright, II falsely stated: (1) that "Plaintiff filed ... Complaint ... 50 pages of exhibits of miscellaneous paperwork." *id.*, at 1, line 20; (2) that "Sanchez does not state the source of the bias." *id.*, at 2, lines 8-9; (3) that "Sanchez brings his claim under one

court of appeals circuit judges William C. Canby Jr., Ronald M. Gould, and Paul J. Watford filed two (2) false statements in the court of appeals to defraud or cheat Petitioner of his property or to obtain judgment of dismissal of his meritorious appeal.[6]

There is ample evidence in the record showing that United States judges Alexander F. MacKinnon, Otis D. Wright, II, William C. Canby Jr., Ronald M. Gould, and Paul J. Watford engaged in a calculated course of egregious misconduct involving dishonesty and subterfuge designed to perpetrate a fraud and avoid personal liability under § 1983 in violation of fundamental maxims of common law, *Fraus est jus nunquam cohabitant,*

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of them." *id.*, at 3, line 1; (4) that "the motion is woefully lacking in the area of 'facts.' " *id.*, at 3, line 18; (5) that "On the Merits, There is No Basis For Recusal." *id.*, at 3, lines 24-25; (6) that "Petitioner has not even attempted to articulate the basis for his belief that Judge MacKinnon harbors a bias against him." *id.*, at 4, lines 13-15; (7) that "a request for disqualification of a judge must rest upon the judge having acquired extrajudicial information which has caused the judge to disfavor the movant." *id.*, at 4, lines 19-22; (8) that "The omitted language demonstrates that the decision holds just the opposite of what Plaintiff argues in his motion." *id.*, at 7, lines16-18; (9) that "This is nothing than a deliberate and bad-faith attempt to mislead the court." *id.*, at 8, lines16-18; (10) that "Sanchez deliberately excised words from passages lifted from the decision so that it appeared to state the rule that one who receives an unfavorable ruling may argue that the court is obviously biased." *id.*, at 8, lines 25-26, at 9, line 1; (11) that "this was not done in good faith." *id.*, at 9, line 5; (12) that "it was done for improper purpose." *id.*, at 9, lines 10-11.

In the Denial Order filed and entered the same day on 12/4/2019, (Doc. No. 20), district judge Otis D. Wright, II falsely stated: (1) that "Plaintiff filed ... Complaint ... 50 pages of exhibits of various miscellaneous paperwork." *id.*, at 1, lines 17-19; (2) that "there is no federal court subject matter jurisdiction." *id.*, at 2, line 24; (3) that "The case ... is outside the jurisdiction of federal courts." *id.*, at 3, line 2; (4) that "there is no case." *id.*, at 3, lines 7-8; (5) "The docket does not reflect an order from Judge Walter on October 28, 2019." *id.*, at 3 lines 9-11.

Indeed, district judge Otis D. Wright, II practiced fraud and injected twenty-nine false statements of fact and law in Petitioner's case in violation of his absolute right to be free from fraud. District judge Otis D. Wright, II is "a fraudster [and] sorcerer." *Behari Kunj Sahkari Avs Samiti v. State Of U.P. & Ors*, 11 S.C.R. 337, 350-51 (2000).

[6] The circuit judges falsely stated: (1) that "this appeal is frivolous," and that "case ... is ... frivolous."

"Fraud and justice never dwell together." *Fraus est celare fraudem*, "It is a fraud to conceal a fraud." *Qui fraudem fit frustra agit*, "He who commits fraud, acts in vain."

§ 1915(e) is obvious subterfuge to evade consideration of a § 1983 claim and the requirements of § 1915(a), and Fed.R.Civ.P. 12(b), and to avoid personal liability for deprivation of constitutional protected rights under color or pretext of state law. *Lex injusta non est lex*, "An unjust law is not law."

Evidently "the district court, [ignored] both the nature of [Petitioner's] right to judicial process for the recovery of his property and the potential seriousness of the burden the [dismissal of meritorious legal claims] places on that right. The defendants seem to interpret the provision of a judicial process for the recovery of property a favor that the government grants its citizens, rather than a right to which they are entitled. In other words, the [United States judges have] free rein to decide if and when it will allow citizens to obtain judicial orders to recover their property.

This view is contrary to both the avowed principles and the spirit of the American polity. It is a prime tenet of our American political philosophy that government has a responsibility to protect the lives, liberties, and property of its citizens, and part of that responsibility includes the provision of courts where individual citizens can seek the vindication of their rights.[7]

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[7] The legislative or supreme authority cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is bound to dispense justice and to decide the rights of the subject by promulgated, standing laws, and known authorized judges. *J. Locke, The Second Treatise of Civil Government*, Chap. X, § 136 (T. Cook ed. 1947) (6th ed. 1764). This

[Petitioner] has the right to go to court to recover his property; it is not a privilege that can be granted or denied [to] him at the government's whim. It is this right to vindicate one's rights in court that is the heart of the constitutional right to due process of law. ...

This principle is expressed in one of the original sources of the theory of constitutionalism, the Magna Carta, Section 40 of that document states that among the duties government owes to its subjects is that 'To no one will we sell, to no one will we refuse or delay, right or justice.' This principle is also expressed in the Supreme Court's holding that the *due process clause* ... prevents [government] from 'denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed rights.'

Thus, any [judge's] attempt to limit the right of individuals to go to court to have their rights vindicated is a matter of serious import. ... [I]t is doubtful that it could simply choose to close [the courts to an indigent on the ground of nonpayment of a fee], forestalling all attempts by citizens to enforce their legal rights. There is a plausible argument that [§ 1915(e)] is not a reasonable regulation of the judicial system but is rather a deprivation

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principle was expressed in our Declaration of Independence, which states that, in order to secure the unalienable rights of all citizens, among which are life, liberty, and the pursuit of happiness, "Governments are instituted among Men" and "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it . . ." The necessity of judicial process for the establishment of just government is demonstrated by the inclusion among the "long train of abuses" compelling the separation of the American Colonies from Great Britain of the contention that the King of Great Britain "obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers."

of the putative litigant's right to due process. This argument applies with particular force to this case because the clerk of the court allegedly refused to process [Petitioner's] request for judicial action ... making the alleged deprivation of due process even more inexcusable. ... [T]his [dismissive action] ... excluded only a particular class of cases from the courts, a class brought by an unpopular group in our society, [indigents]. If [Petitioner], who is [indigent], had been excluded from the courts because he is [indigent], there would be no doubt that his rights to equal protection and due process under the [fifth] amendment were violated. These rights are not relinquished because he is [an indigent]." *Morrison v. Lipscomb*, 877 F.2d 463, 467-68 (6th Cir. 1989) (citations omitted).

(4) Violation of Fifth Amendment Right to be Free from the Practice of Law by United States Officers

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from the practice of law by United States officers. *See* 28 U.S.C. §§ 454, 955; *United States v. Bosch*, 951 F.2d 1546, 1551 n. 1 (9th Cir. 1991) ("outlawing the practice of law by judges, magistrates, and court clerks respectively."); *Audett v. United States*, 265 F.2d 837, 840 (9th Cir. 1959) ("Congress ... prohibit the practice of law by ... judges of the courts ... or court clerks.").

§ 1915(e) permits judicial officers to figuratively speaking, step down from the bench and assume the role of advocate for the defendants in the action. And in that role to exceed the proper bounds of advocacy and file *sua sponte* order dismissing the case. "[I]t is not the proper function of the district

court to assume the role of advocate for ... litigant." *De Young v. State*, 890 F.Supp. 949, 951 (D.Kan. 1995); *Paulson v. Evander*, 633 So.2d 540 (1994) ("the judge on his own amended and redrafted pleadings."); *In re Inquiry Concerning a Judge, Gridley*, 417 So.2d 950 (1982) ("Judge Gridley, with full knowledge that he had no jurisdiction to do so, entered a sua sponte order.")

§ 1915(e) authorizes judicial officers to prepare, draft, and file a motion to dismiss for the defendants for either "failure to state a claim" or "immunity" and enter a *sua sponte* order dismissing the indigent's case. Motions to dismiss of that nature are appropriate before the district court by the defendants and not the judge, magistrate, or court clerk. *See e.g. Gonzalez v. City of Chicago*, 888 F.Supp. 887 (N.D.Ill 1995) (Attorney for the defendants Susan S. Sher and several other attorneys filed motion to dismiss); *see also Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997) (motion to dismiss filed by attorney for the defendant).

"Where a public official has or may have a defense based on ... immunity, the burden is on the official to raise the defense and establish his entitlement to immunity. ... [D]ismissal of the complaint pursuant to 28 U.S.C. § 1915 is not appropriate in such cases." *Henriksen v. Bentley*, 644 F.2d at 856 (quoting *Gomez v. Toledo*, 446 U.S. 635 (1980)). "[A] federal court need not address the issue of ... immunity if neither party brings it to the attention of the court." *Baltimore County v. Hechinger Liquidation Trust*, 335

F.3d 243, 249 (3rd Cir. 2003) (quoting *Wisconsin Dep't. of Corrections v. Schacht*, 524 U.S. 381, 389 (1998)).

§ 1915(e) allows judicial officers to be players rather than umpires and file motions to dismiss for the defendants and order dismissal. "Judges should be umpires rather than players." *Rose v. Superior Court*, 81 Cal.App.4th 564, 570 (2000). § 1915(e) turns umpires into players for all intent and purposes.

(5) Violation of Fifth Amendment Right not to be Tried before a Judge Who is Biased

§ 1915(e) violates Petitioner's Fifth Amendment right not to be tried before a judge who is biased against him. *In re Richard W.*, 91 Cal.App.3d 960, 967 (1979) ("A party in ... all ... proceedings is entitled to a trial by a judge who is detached, fair and impartial and has a constitutional right not to be tried before a judge who is biased against him."); *United States v. Sciuto*, 531 F.2d 842, 845 (7th Cir. 1976) ("It has long been recognized that freedom of the tribunal from bias or prejudice is an essential element of due process."); *United States v. Thompson*, 483 F.2d 527, 529 (3rd Cir. 1973) (Plaintiff "is entitled to trial before a judge who is not biased against him at any point of the trial."); *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires absence of actual bias in the trial of cases.").

§ 1915(e) permits a judge who has a personal bias against the party because he is indigent and self-represented to sit and act in his case and make judicial rulings that display a deep-seated favoritism towards

defendants and antagonism toward indigent party that is self-represented. "[B]ias exists. ... [T]he courts ... are biased against the self-represented. ... The lawyer bias against the self-represented. ... [T]he bias against the self-represented that pervades [the] courts." *Bias Against Pro Per Litigants; What It Is. How to Stop It.*, by Stephen Elias (April 4, 1997) Nolo Press.

§ 1915(e) permits a district judge to issue a ruling on his own motion based entirely on personal knowledge of the defendants creating the appearance of favoritism. *Ann. Rept.* (2003) *Advisory Letter* 12, p. 27. Additionally or alternatively, § 1915(e) allows a district judge to go forward with a motion hearing in the absence of self-represented litigant creating the appearance of antagonism. *Ann. Rept.* (2005) *Advisory Letter* 1, p. 26.

(6) Violation of Fifth Amendment Right to be Free from Extortion Under Color of Official Right

§ 1915(e) violates Petitioner's Fifth Amendment right to be free from attempted extortion under color of official right. *See* 18 U.S.C. § 1951. § 1915(e) authorizes judicial officers to demand, charge, or extract money payment from the indigent litigant on the false ground that it is due to him as a court fee, in that the judicial officers on the false ground that the lawsuit or appeal is frivolous or that indigent's conduct warrants sanctions attempted to extract money from him for court fees. *See e.g. McCormick v. United States*, 500 U.S. 257, 279 (1991) ("[E]xtortion 'under color of official right,' and ... the defendant, a justice of the peace, had extracted a payment from a litigant on the false ground that it was due him as a court fee.")

(7) Violation of Fifth Amendment Right to Equal Protection

§ 1915(e) violates Petitioner's Fifth Amendment right to sue, be a party, give evidence, and to the full and equal benefit of all laws and proceedings for the security of his person and property because it permits judicial officers to terminate any and all of the indigent's constitutional and statutory rights without notice, hearing, and opportunity to appeal by permitting dismissal of his meritorious suit, action, appeal or proceeding on the basis of indigence. Instead of being subjected to the same rules as non-indigents, indigents who would otherwise qualify for IFP status must pay the filing fees. Access to the court is a fundamental right that remains with an individual even after impoverishment. Petitioner's claim that he suffered a violation of his health freedom is precisely the type of fundamental rights claim for which the federal court vigilantly guarded an indigent's access to the courts.

§ 1915(e) affects a fundamental right. § 1915(e) stops only indigents from filing civil cases. Those litigants who have money to pay for filing fees can file many frivolous lawsuits as they can afford. Under § 1915(e) indigents eventually have to pay the filing fee. Stopping all lawsuits under § 1915(e) by indigents would bar important and arguably meritorious constitutional claims. § 1915(e) does nothing to reduce the frivolous filings of non-indigent litigants; they may file as many frivolous filings as they wish under § 1915(e). The provision is too broad in that it may bar non-frivolous actions of indigent litigants. If an indigent files a meritorious IFP action or appeal and all are

dismissed as frivolous, then he is barred without regard to the merits of his case, unless he pays the filing fee. § 1915(e) makes no provision for the merits of an indigent litigant's filings; it does not even grant courts the discretion to hear claims that are clearly meritorious. § 1915(e) is unconstitutional under the equal protection component of the Fifth Amendment's Due Process Clause. *See e.g. Ayers v. Norris*, 43 F.Supp.2d 1039 (E.D.Ark. 1999).

(8) Violation of Seventh Amendment Right to Trial by Jury

§ 1915(e) violates Petitioner's Seventh Amendment right to trial by jury because it denies him the benefit of a trial of the fact issues before a jury. § 1915(e) nullifies the Seventh Amendment right to trial by jury in civil suit amounting to tyranny. *See Declaration of Independence* (US 1776), par. 20 ("For depriving us in many cases, of the benefits of trial by jury."). § 1915(e) "frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a factfinding process for the resolution of disputed facts." *Denton v. Hernandez*, 504 U.S. at 32.

(9) Violation of Ninth Amendment Right to the Truth In Evidence

§ 1915(e) violates Petitioner's Ninth Amendment right to the truth in evidence because it excludes any and all relevant oral and documentary evidence in civil proceedings. § 1915(e) prohibits judicial officers from considering the indigent's evidence proving his claims.

(10) Violation of Eleventh Amendment Right to Commence a Suit for Injunctive Relief against One of the United States

§ 1915(e) violates Petitioner's Eleventh Amendment right to commence a suit for injunctive relief against the State of California to prevent the enforcement of a State policy on the ground of its unconstitutionality under *Ex parte Young*, 209 U.S. 123 (1908).

(11) Violation of Thirteenth Amendment Right to be Free from Slavery or Involuntary Servitude

§ 1915(e) violates Petitioner's Thirteenth Amendment right to be free from slavery or involuntary servitude. *Misera est servitus ubi just est vagum aot incertum*, "It is misery slavery where the law is vague or uncertain." The statutory language in § 1915(e)(2)(B), to-wit: "frivolous," "fails to state a claim on which relief may be granted," and "immunity" is unconstitutionally vague and ambiguous creating conflict, confusion, and misunderstanding designed to terminate the indigent's constitutional and statutory rights without notice, hearing, and opportunity to appeal by permitting dismissal on arbitrary or irrational basis. In fact, § 1915(e) does not define with precision and clarity the statutory language permitting judicial officers to usurp power to dismiss the indigent's meritorious legal claims for want of jurisdiction, immunity, or frivolousness amounting to misery slavery, as a matter of fundamental maxim of law. *See e.g. Scott v. Sandford*, 60 U.S. 393 (1857).

The language in § 1915(e) authorizes judicial officers to dismiss the indigent's meritorious "COMPLAINT" on the ground of "lack of subject-

matter jurisdiction," a ground which is not articulated or detailed in § 1915(e), or on the ground of "fails to state a claim on which relief may be granted," a ground which is articulated or detailed in Fed. R. Civ. P. 12(b)(6), or on the ground of "immune from such relief," a ground which includes "official immunity," "sovereign immunity," "total immunity," "absolute immunity," "legislative immunity," "litigation immunity," "judicial immunity," "quasi-judicial immunity," "qualified immunity," "personal immunity," "good-faith immunity," "common-law immunity," and "judge-made immunity," or on the ground of "frivolous" allowing judicial officers to apply the incorrect legal standard when addressing the question of frivolous, jurisdiction, or immunity for the purpose of slavery.

(12) Violation of Article III Right to Hearing on the Merits of a Claim Over which the Court has Jurisdiction

§ 1915(e) violates U.S. CONST. art. III, § 2 because it strips or withdraws the United States courts of jurisdiction over those cases that fall under 28 U.S.C. §§ 1391, 1331, 1343(a), and 1367(a). § 1915(e) limits the jurisdiction of the United States courts.

Federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given them and have no right to decline the exercise of that jurisdiction. *See Ayers v. Norris*, 43 F.Supp.2d 1039. § 1915(e) permits judicial officers to decline the exercise of jurisdiction which is explicitly given. The "procedural" statute § 1915 for the granting or denying of IFP is not jurisdictional. *Cf. Kontrick v. Ryan*, 540 U.S. 443, 454 (2004). §

1915(e) delineates what cases district courts are competent to adjudicate in violation of Petitioner's Article III "right to a hearing on the merits of a claim over which the court has jurisdiction." *Harmon v. Superior Court of California*, 307 F.2d at 798.

CONCLUSION

Petitioner respectfully requests that this Court grant the writ of *certiorari* and order full briefing and argument on the merits of this case.

Date: October 31, 2020

Respectfully submitted,

By: _____
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Petitioner *in pro se*