

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 REHEARING

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Petitioner *in pro se*

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PETITION FOR REHEARING

Petitioner Immanuel F. Sanchez respectfully asks this Court to grant rehearing of this Court's January 19, 2021 order, pursuant to Rule 44 of this Court.

ARGUMENT

I. VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Pursuant to the Fifth Amendment of the Constitution of the United States of America, "No person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. As a substantive limitation on government action, the Due Process Clause precludes arbitrary or capricious decision making. *See Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government."); *See also Dent v. West Virginia*, 129 U.S. 114, 123 (1889) ("the terms 'due process of law' was ... designed to secure the subject against the arbitrary action of the [government] and place him under the protection of the law.").

The record shows that the Court acted in an arbitrary and capricious manner when it made its decision to deny Petitioner's writ of *certiorari* because it completely failed to state its reasons in writing. Thus, the Court's decision denying Petitioner's writ of *certiorari* constitutes an absolute abuse of discretion in violation of the Fifth Amendment Due Process Clause.

Indeed, the Court provided a summary or conclusory statement that does not detail or analyze the reasons for its decision. In fact, the Court's decision does not set forth any reasons upon which it relied in reaching its conclusion. Petitioner is

presented with a summary or conclusory statement, that “[t]he petition for a writ of certiorari is denied.” The Court did not detail or analyze the reasons upon which this decision was based. No statement was made by the Court as to the reasons for its conclusion; the Court did not identify any evidence or facts it relied on in making its decision to deny Petitioner’s writ of *certiorari*. Evidently, the Court’s decision provides no rational explanation, inexplicably departs from clearly established precedent, is devoid of any reasoning and contains only a summary or conclusory statement. Clearly, the decision or action of the Court is arbitrary and capricious in dereliction of the Fifth Amendment to the Constitution of the United States of America under *Wolff v. McDonnell* and *Dent v. West Virginia*.

II. VIOLATION OF CANON 1 OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

Canon 1 declares: "A Judge Should Uphold the Integrity and Independence of the Judiciary." The accompanying text adds: "An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."

The judges' decision to deny Petitioner's writ of *certiorari* manifested an intentional disregard of his fundamental constitutional rights, namely, the First Amendment right to petition, the Seventh Amendment right to trial by jury, the Ninth Amendment right to health care, the Thirteenth Amendment right to be free from slavery or involuntary servitude, and the Fourteenth Amendment right to due process of law in violation of Canon 1 of the Code of Conduct for United States Judges.

No more fragile rights exist under the Constitution of the United States of America than the rights of the Citizen. Consequently these rights are deserving of the greatest judicial solicitude. The ideal of the American legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if people clothed with judicial power may ignore the Citizen's fundamental constitutional rights merely because he is indigent. Justice requires that judges be solicitous of rights of Citizens who come before the court.

Moreover, the judges' bad faith is directed towards the legal system itself; their arbitrary denial of Petitioner's writ of *certiorari* because of their personal

beliefs as to his case and their personal hostility to him for lack of attorney smacks of an inquisitorial intent to serve imagined truth at the expense of justice contrary to Canon 1 of the Code of Conduct for United States Judges.

III. VIOLATION OF CANON 2A OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

The decision of the Court evidences that the judges engaged in a defiance and willful non-compliance of the law in violation of Canon 2A of the Code of Conduct for United States Judges. Pursuant to 28 U.S.C. § 2403(a), “in any action, suit or proceeding in a court of the United States ... 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.”

The record demonstrates that the judges wrongly ignored their duty to certify the fact that Petitioner brought into question as required by 28 U.S.C. § 2403(a), the constitutionality of 28 U.S.C. § 1915. Under § 2403(a), it is required that the Court, even though it finds that constitutional question is frivolous, give notice to Attorney General. *See Wallach v. Lieberman*, 366 F.2d 254, 257-58 (2nd Cir. 1966).

Certification is mandatory. The obligation to certify rests with the Court, not with the parties. The notice is not discretionary. Certification is thus a duty of the Court that should not be ignored. *Id.*

In *Pleasant-El v. Oil Recovery Co.*, 148 F.3d 1300, 1302 (11th Cir. 1998), the Court specifically held that: “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.” The record discloses that the judges ignored, intentionally disregarded, or refused to follow court procedures under § 2403(a) in violation of Canon 2A of the Code of Conduct for United States Judges. The judges’ conduct constitutes a breach of the ethical duty to “follow the law” under Canon 2A of the

Code of Conduct for United States Judges, "A judge should respect and comply with the law."

IV. VIOLATION OF PETITIONER'S RIGHT TO *CERTIORARI* REVIEW

"An abuse of judicial discretion has always been, and always ought to be, the subject of review in some form. When on the undisputed facts the court exceeds its discretion, or takes action contrary to its mandatory duty, the party aggrieved, in the absence of other adequate remedy, is entitled to annulment on the statutory writ of certiorari." *State v. District Court of Jefferson County*, 213 Iowa 822, 831-32 (1931).

It is well established that "the dismissal of Petitioner's *in forma pauperis* complaint was an absolute abuse of discretion." Cert. Petition, Ground I. The abuse of discretion gave Petitioner right to *certiorari* review. See *Denton v. Hernandez*, 504 U.S. 25 (1992) ("The Court granted the writ of certiorari and overturned the appellate court's decision."); *Neitzke v. Williams*, 490 U.S. 319 (1989) ("On certiorari to review a case in which a Federal District Court denied a plaintiff leave to proceed in forma pauperis based on a finding that the complaint was frivolous."); *Boag v. MacDougall*, 454 U.S. 364 (1982) ("Granting certiorari, the United States Supreme Court reversed."); *Coppedge v. United States*, 369 U.S. 438 (1962) ("On certiorari, the United States Supreme Court vacated the judgment of the Court of Appeals and remanded the case to that court."); *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331 (1948) ("Plaintiff petitioned this Court for a writ of certiorari and moved for leave to appeal in forma pauperis. ... [T]his Court entered an order assigning the motion for argument ... and stating that it desired 'to hear argument upon the questions presented by the motion for leave to proceed in forma pauperis.'").

The judges acted illegally in denying the application because Petitioner is entitled under 28 U.S.C. § 1254(1) to a writ of *certiorari*. Under § 1254(1), “Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil ... case ... after rendition of judgment.” Petitioner has a “right ... to the common law prerogative writ of certiorari for the removal of all proceedings pending in an inferior court under the constitutional power and duty in this Court to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.” *Id.*, at 836.

Accordingly, the judges’ decision denying *certiorari* review of Petitioner’s case violated his right to the common law prerogative writ of *certiorari* under *State v. District Court of Jefferson County*, *Denton v. Hernandez*, *Neitzke v. Williams*, *Boag v. MacDougall*, *Coppedge v. United States*, and *Adkins v. E. I. DuPont de Nemours & Co.*

CONCLUSION

Petitioner respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Date: February 1, 2021

Respectfully submitted,

By: 
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Petitioner *in pro se*