

Case Number 20-8010

IN The UNITED STATES SUPREME COURT

ORIGINAL

James Logan Diez, Petitioner,

Versus

GOOGLE, INC., Respondent.

PETITION for WRIT of CERTIORARI

FILED

FEB 22 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Appeal from the FIFTH CIRCUIT COURT

UNITED STATES COURT OF APPEALS

Cause No. 20-50940

From the United States District Court for
the Western District of Texas - Austin

Cause No. 1:20-CV-495

James Logan Diez (Pro Se)

Burnet County Jail #51285

P.O. Box 1098

Burnet, TX 78611

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*Respondent has not been served/answered pursuant to
28 U.S.C. § 1915(e) by ORDER of the Courts below.

QUESTIONS

- [1] Does 47 U.S.C. § 230 immunity given to Internet Service Provider violate the U.S. Constitution's FIRST AMENDMENT's Right to Petition, and FOURTEENTH AMENDMENT's Equal Protection and Due Clauses?
- [2] Did the Courts below err in extending 47 U.S.C. § 230 immunity to Defendant-Respondent WITHOUT addressing the constitutionality of § 230 AFTER the Plaintiff-Petitioner had specifically challenged the statute's constitutionality?
- [3] Did the Courts below err in limiting the applicability of 18 U.S.C. § 2252(f) to a very narrow Class of persons, hence, depriving other Citizens having valid and legitimate aggrievements, of their right to seek redress under the statute?

[4] Applicability of 47 U.S.C. § 230 to the Google Image Search Results "thumbnail" images was held invalid by the NINTH CIRCUIT U.S. Court of Appeals, however, the FIFTH CIRCUIT U.S. Court of Appeals subsequently applied said immunity to such images: which Circuit's findings, if either, are correct?

[5] Did the Courts below err in finding, contrary to Texas Supreme Court controlling opinions, that Texas Deceptive Trade Practices and Strict Liability Laws requires a Plaintiff to have personally paid for/purchased the product which caused the Plaintiff's injury/harm?

[6] Did the Courts below err in finding the Plaintiff-Petitioner's ORIGINAL COMPLAINT (with Appendixes A-C) failed to state a claim?

[7] IF the ORIGINAL COMPLAINT did fail to state a claim: Did the Courts below err in dismissing WITH PREJUDICE?

PROCEEDINGS BELOW

(i) ORIGINAL COMPLAINT w/Appendixes A-C
filed: May 7, 2020.

Cause No. 1:20-CV-495

U.S.D.C. - Western Dist. Tex. - Austin

James Logan Diez v. GOOGLE, Inc.

* Magistrate's Recommendation for DISMISSAL signed
May 12, 2020: filed May 20, 2020.

* Plaintiff's OBJECTION filed May 22, 2020.

(ii) DISTRICT COURT'S ORDER of DISMISSAL WITHOUT
PREJUDICE signed October 30, 2020.

FINAL JUDGMENT entered November 19, 2020 —
however — Final Judgment refers to order of dismissal
WITH Prejudice.

(iii) Appeal taken to the U.S. Court of Appeals for the
FIFTH CIRCUIT November 20, 2020;

Cause No. 20-50940

* 5th Circuit Panel opinion DISMISSING WITH PREJUDICE
entered December 17, 2020. (see 2020 U.S. App.
LEXIS 39695)

* Appellant's Petition for Rehearing (posted Dec, 26, 2020)
stamped FILED January 6, 2021.

* Rehearing DENIED January 25, 2021.

* NOTICE of Appeal, and REQUEST for RECORD to be prepared, mailed to U.S. District Clerk for Fifth Circuit on February 1, 2021, advising the Clerk CERTIORARI would be petitioned for in the United States Supreme Court.

(iv) Motion to Proceed In Forma Pauperis, and original Petition for writ of Certiorari mailed to the Clerk of the United States Supreme Court on the 22nd day of February, 2021. (remailed 5/ 21.)

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BASIS for JURISDICTION

1. The FIFTH CIRCUIT Court of Appeals' decision in this Case, regarding application of 47 U.S.C. § 230 Immunity, is in conflict and contradictory to the decision entered in Perfect 10, Inc. v. Amazon, Inc., 508 F.3d 1146, 1160-61 (9th Cir. 2007).
2. The FIFTH CIRCUIT Court of Appeals' decision in this Case, regarding Standing in TORT Petitions on Deceptive Trade Practices, is in contradiction to Texas Supreme Court published opinion on a matter of Right to Petition.
3. The FIFTH CIRCUIT Court of Appeals' decision in this Case, regarding Ex Se pleadings, is contrary to the standard, usual, and accepted course of judicial proceedings (as relates to Amended pleadings).
4. The FIFTH CIRCUIT Court of Appeals' decision decided a constitutional level question on the applicability of 18 U.S.C. § 2252A(f) —

to wit, an exclusive "first impression" question as to who does and does not have standing to bring civil suit under §2252A(f)(1) as "any person aggrieved" — an original question that should be first answered by this Court.

NOTE on 4. — Neither Petitioner nor the Courts below could find any kind of guiding Authority which would have permitted conclusive determination of an Answer on the "First Impression" Question — no Case Law; no Treatises; no Congressional Record excerpts.

Statutory Jurisdiction

I. United States Constitution, Art. III §2, Cl. 1:

"The Judicial Power shall extend to all Cases, in Law and Equity, arising (...) between Citizens of different States (...)."

II. 28 U.S.C. §1254(1):

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of Judgment or decree ; (...)."

III. U.S.C., Supreme Court Rules 10-16.

Rule 29.4(b) Statement

28 U.S.C. § 2403(a) may apply to this Case, in that Petitioner challenged the constitutionality of 47 U.S.C. § 230 immunity extended to the Defendant-Respondent, an Internet Service Provider. The challenge, APPENDIX C of the Original Complaint, argues that § 230, on its face, infringes upon and/or denies FIRST AMENDMENT Right to Petition, and FOURTEENTH AMENDMENT Rights of DUE PROCESS and EQUAL PROTECTION.

To Petitioner's knowledge — neither the District Court nor the Court of Appeals complied with Rule 29.4(b) and/or 28 U.S.C. § 2403(a) requiring the United States Attorney General be notified by certification of the challenge.

HOWEVER — this Petitioner DID send a photocopy of APPENDIX C to the United States Attorney General by U.S. First Class Mail.

AUTHORITIES INVOLVED

FIRST AMENDMENT, United States Constitution

FOURTEENTH AMENDMENT, United States Constitution

18 U.S.C. § 2252A(f)

28 U.S.C. § 1254 (1)

28 U.S.C. § 1746

28 U.S.C. § 1915

28 U.S.C. § 2403

47 U.S.C. § 230

Texas Business & Commerce Code § 17.41 et. seq.

Federal Rules of Civil Procedure, Rule 15(a).

U.S.C.S. Supreme Court Rule 29.4(b)

Statement of the Case

Concisely related — Petitioner, a lifelong Naturist and adherent to the Creationist Naturism Religion (C-N'ism), which he advocates for and informs about through Blogs on Social Media — obtained 10-12 photographic images of Naturist/Nudist children either by direct download of Google Image Search Results "thumbnails" for a search parameter "FAMILY NATURIST Females/Girls" and "FAMILY NUDIST Females/Girls," or through Google's advertised/promoted "inline links" to Search Result promoted displayed websites. Google, Inc. had publically made it clear that Google filtered and BLOCK ALL illegal images of children to "protect users" of Google Services.

Petitioner had sought these images — as well as images of adult Naturists/Nudists — for use in his societal and religious Blogs aimed at educating the clothed societal Majority on the real lives and Religion of Naturists and Naturism; and, in religious expression.

Google, Inc. displayed, promoted and distributed the images to Petitioner under the "label" of "FAMILY NATURIST/NUDIST Females/Girls"; and, gave Petitioner reasonable cause to believe all the images were legal to view, download, and possess/use publically.

* NO WARNING was given by Google, Inc. that the images might be considered to

be child pornography by some policemen,
prosecutors, judges, or jurors.

In that Google, Inc. had successfully pursued the
Public trust — Petitioner had no reason to suspect
the images might be considered illegal, therefore, he then
posted one of the images on his religious "Board" on
Pinterest.com titled "MAIDEN EARTH GODDESSES"; a photo-
essay to give recognition and praise to Ewig Weiblich,
the Eternal Feminine, Goddess of the C-N'ism Religion.
The image of the Naturist Child, an iconic, living
symbol of The Nymph-Maiden Aspect of the Goddess
representing Purity-Innocence.

This image was reported (allegedly by Pinterest)
to the National Center for Missing and Exploited Children
(NCMEC) as suspected child pornography.

The NCMEC, characterizing the image as only
"Child images (unclothed)," forwarded the Pinterest.com report
to the Texas Attorney General.

On December 17, 2017, using a Search Warrant issued
solely and exclusively on the solitary photograph, held
to be "child pornography" containing a "lewd exhibition
of the breast," Petitioner's home was raided in an
aggressive, Police-State-style, early morning raid; and,
5 cellphones were seized. No arrests were made,
hence, Petitioner thought that was the end of it.

On February 21, 2019, Petitioner was arrested and jailed on a (2-Count) Indictment, alleging he possessed child pornography, based on (2) of the images he had downloaded either direct-from or through Google Image Search Results. [Petitioner has remained confined in jail continuously for (24) months in Pretrial Confinement due to financial inability to make money bail (and advent of COVID-19 closures of the Courts).]

On February 24, 2020, after Petitioner discovered specifically which photographs he had been indicted for, a "Notice of Intent to Sue" was sent to Google, Inc. advising them that if they did NOT resolve the issue and assist Petitioner in clearing himself of the charges arising directly from the Google-promoted and distributed images — a lawsuit would be filed.

Google, Inc. gave NO response whatsoever — hence, suit was filed on May 7, 2020, in the United States District Court, Western District of Texas, Austin Division (jurisdiction based on diversity of citizenship; amount in controversy; and, Federal Statutory Claims).

Petitioner sued on Claims under 18 U.S.C. § 2252A(f); False Labelling; Failure to Warn; Strict Liability; unreasonably dangerous product; marketing defect; and, violation of Fiduciary Trust.

ARGUMENTS

IF Petitioner may — a brief opening statement is behooved in the interest of Justice.

Petitioner is not an Attorney, and has only limited Paralegal training in Criminal Law and Prisoners' Rights. His experience in TORT CLAIMS is practically non-existent, and prior to May 2019, Petitioner did not have a clue as to "Child Pornography" Law's state of complexity and breadth — not to mention its numbingly incoherent, illogical and confusing body of Case Law!

While Petitioner has an IQ of 130⁺-2, and is a Quick-Study — he nonetheless does NOT feel himself either qualified or competent to present the QUESTIONS herein to this Esteemed Court's astute Body.

The issues herein do and will effect hundreds of Citizens in dozens of categories — Students; Artists; Writers; Reporters; Naturist/Nudist Families; even Parents and Grandparents — and, should Petitioner fail herein, because of his lack of knowledge and experience, it could harm untold numbers of Citizens by hindering their legitimate petitions for redress of grievances like or similar to the Petitioners.

Therefore — Petitioner will keep his ARGUMENTS to the most BASIC level here — BUT, will ask the the Honorable Court give liberal and in depth review

to Petitioner's Briefs, Memorandums, Objections and other Pleadings contained in the RECORD from the lower Courts (which pleadings Petitioner will endeavor to refer to when possible). Petitioner respectfully thanks this Court.

On QUESTION [I] — Internet Service Providers are, in fact, basically electronic magazines, newspapers, or "mail order catalogs" in which users may glean information, place/answer ads, or advertise/purchase products. The only real difference between the Internet Service Provider (ISP) and, for example, a major Newspaper like The New York Times, is the ISP has a much, much larger Readership and provides the Services near Instantaneously. When 47 U.S.C. § 230's immunity protections were created for ISP's — the ISP's were infant "Dot-Com" companies struggling to create and develop something brand new to the world. Hence — at that time — these ISP's probably needed a bit of "Big Brother's/Uncle Sam's" protection. Such is no longer the case with those multi BILLION dollar a year corporate giants!

* Please, review Petitioner's APPENDIX C,
ORIGINAL COMPLAINT: * Plaintiff's Challenge
to the Constitutionality of 47 U.S.C. § 230!

The antique argument, that without §230 immunity the ISP's effort to self-police would be chilled, is a CONTRA-Sense, unintelligent argument. NOT having the §230 immunity would behoove ISP's to be MUCH MORE DILIGENT about censoring illegal content and reporting users who attempt to post it. For example —

* An unscrupulous person could create an ISP under the website "sexykidbulletin.com" or "sexychildrenbulletinboard.com" which allowed users to post any photograph they wished depicting "sexy" minors (with the ISP's disclaimer of course). All the images would be "Third Party" postings — hence, the ISP would be immune to suits by the injured child victims thanks to §230 even though it purposefully created a public bulletin board for pedophiles worldwide!

As Petitioner concisely briefed in his Appendix C challenge, §230 denies aggrieved Citizens their right to Petition for injuries caused by ISP's failure to protect under commonlaw — and, grants ISP's immunities not enjoyed by equivalent paper-print service providers — which consequently denies persons aggrieved by ISP's the equal right to petition enjoyed by those aggrieved

by paper-print service providers.

On QUESTION [2] — the Courts below applied immunity under §230 (49 U.S.C.) to, in part, justify the dismissal of Petitioner's Complaint WITH PREJUDICE, without even remotely addressing the challenge to the constitutionality of §230.

Plaintiff-Petitioner's assertion is/was that 47 U.S.C. §230 can NEVER be applied constitutionally to a Citizen who, for valid grievances against an ISP, petitions the Courts for redress — and, even if it could be applied in a valid manner, it nevertheless is so overbroadly applied that it infringes upon those legitimate rights to petition under the FIRST AMENDMENT by those whose injuries are factually caused by an ISP's actions or grossly negligent inactions. (See New York State Club Ass'n v. New York City, 487 U.S. 1, 11 (1988))

The Honorable Justice Thomas has, also, recently questioned the "questionable precedent" created in the lower Courts' application of §230. See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC, 208 L. Ed. 197 (2020) (concurring opinion). "Adopting the too-common practice of reading extra immunity into statutes where it does not belong, courts have relied on policy and purpose arguments to grant sweeping

protection to Internet platforms. (1) Courts have extended the immunity in §230 far beyond anything that plausibly could have been intended by Congress." Id. at 198-99 (internal citations, quotation marks and parenthetical marks omitted).

Justice Thomas' concurring opinion is astute and instructive — and quite applicable to Petitioner's case!

ON QUESTION [3] — 18 U.S.C. §2252(f) provides in relevant part:

"(f) Civil remedies.

(1) In general. Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A [18 USC §1466A] may commence a civil action for the relief set forth in paragraph (2)."

The Courts below held Petitioner is/was NOT a member of the Class of "aggrieved persons" intended to have civil standing under §2252(f) — even though Petitioner IS a "person aggrieved" most egregiously by Google, Inc.'s display, promotion and distribution of material containing what Texas Authorities have insisted to be child pornography. 18 U.S.C. §2252A(2)(B) and (3)(B).

However — NEITHER the District NOR Appellate Courts identified exactly WHY such narrowing of the meaning

of "any person aggrieved" excludes Petitioner — NOR did either Court cite any authoritative Case Law, Treatises, or Congressional Record citation to support the exclusion of persons in Petitioner's circumstances from the §2252A(f) "any person aggrieved."

* Petitioner is NOT a "collector of child pornography" NOR some pedophile amassing hundreds or thousands of illicit images. Petitioner IS a verifiable, lifelong Naturist adherent to the Religion of Creationist Naturism which he is proveably advocating for on the Internet.

* Petitioner was NOT surfing some Darkweb, child pornography websites searching for sexually explicit images of children. Petitioner WAS on Google Image Search searching for LAWFUL images of "FAMILY Naturist Females/Girls" he could use and did use as iconic religious symbols on an open Public Forum.

Although accused citizens are SUPPOSED to be presumed innocent until proven guilty — the Courts below treated Petitioner with the same disdain one convicted of some child sexual abuse offense might expect — hence, without

stated legal authority or foundation, held Petitioner had no standing under §2252A(f) because he "was not a category of person Congress intended the phrase "any person aggrieved" to apply to (!!!).

Petitioner asserts the Courts below erred in giving such narrowing, exclusory, interpretory application to §2252A(f).

ON QUESTION [4] — In 2007 and 2011, the U.S. Court of Appeals for the NINTH CIRCUIT held that, "Google would be directly liable [for unlawfully displayed images] if Google stored and served electronic information (e.g. "thumbnail" images) to a User, rather than merely inline linking or framing the photographs." Perfect 10, Inc. v. Amazon, Inc., 508 F.3d 1146, 1160-61 (9th Cir. 2007). The Perfect 10 Court, also, noted that, "because Google initiates and controls the the storage and communication of the thumbnail images," third-party postings covered by §230 Immunity was irrelevant and did not need given consideration. Id. at 1161 n. 6
See also Perfect 10, Inc. v. Google, Inc., 653 F.3d 976 (9th Cir. 2011).

However, even though Petitioner's claims against Google, Inc. arise from, and are based almost exclusively on such "thumbnail" images controlled, stored, and initiated by Google, Inc. for their Search Results displays — the FIFTH CIRCUIT held in this 2019-filed case that §230 Immunity DOES apply, in direct contradiction to/of the NINTH CIRCUIT's holdings in the Perfect 10 cases.

* The applicability to Google Image Search Results "thumbnail" images of §230's immunity is conflicted between the Appellate Circuits and needs resolved by our Supreme Court's wisdom.

Petitioner would respectfully assert the 9th Circuit's reasoning is sound and valid, and that the 5th Circuit erred. Also, the Ninth Circuit's jurisdiction is the location of Google, Inc.'s primary business office.

ON QUESTION [5] — Petitioner's state law claims are premised on the following:

- [i] False labelling of the images' character;
- [ii] Failure to warn of potential risks/danger;
- [iii] unreasonably dangerous product;
- [iv] marketing defect;

[v] strict liability; and,
[vi] violation of fiduciary trust.

The ONLY justification found in the lower Courts' opinions for dismissal of Petitioner's claims is that the Petitioner, "does not allege that he purchased or leased anything — goods or services — from Google." (Magistrate's Report & Recommendation at page 4, which the District Court adopted.) [See also Appellate Court dismissal affirmation opinion at page 3-4; Diez v. Google, Inc., 2020 U.S. App. LEXIS 39695 at [*2-*4] (HN's 3-6)] The FIFTH Circuit opinion, also, misread the ORIGINAL PETITION and overlook/ignored specifically stated claims. (See "Appellant's Petition for Rehearing" at page 5 subsection [6](18)(23))

While the lower Courts' opinions MAY have addressed Petitioner's "false labelling" [i] claim — the reason given for dismissal of the state law claims does NOT void Petitioner's claims stated and identified in [ii]–[vi] above.

Furthermore — even if the Court were addressing claims which involved products that are/were SOLD to users by Google, Inc. (which is NOT the case with Google's gratuitous search service); the Texas Supreme Court has clearly held the "end user" or "ultimate consumer" of a deceptively labelled, defective, and unreasonably dangerous product, who is harmed by such product, need NOT be the

person who actually paid for the product. Darryl v. Ford Motor Co., 440 S.W.2d 630, 633 (Tex. 1969) (recovery under the strict liability doctrine is not limited to users and consumers.)

Were the Court to uphold dismissals of product defect and strict liability claims merely because the injured party had not paid for the product — it opens the door to unscrupulous distributors handing out defective, unreasonably dangerous, or falsely labelled products gratuitously (to claim tax breaks for the value thereof), and leave those injured by the "free" products no recourse to obtain redress for their injuries!

The FIFTH CIRCUIT pointed out that, "To be clear, 'consumer status depends on the transaction, not the contractual relationship between the parties'." Diez v. Google, Inc., *supra* at ¶31[HN5].

* The current Law Dictionary definition for "transaction" includes, "any activity involving two or more persons." Black's Law Dictionary (11th Ed. 2019)

* Merriam-Webster's includes "transaction: 1. something transacted; esp.: an exchange or transfer of goods, services, or funds" Merriam-Webster's Collegiate Dictionary 1327 (11th Ed. 2003)

The Court will note that neither definition requires an exchange of payment — whether the distributor has "goods" for sell, or gratuitously offered, once a User or "Taker" receives the "goods" from the distributor, a "transaction" between the distributor and user has taken place. The Courts below erroneously:

- (a) dismissed Petitioner's state law claims;
 - (b) did not address all of the state law claims in the original complaint, with clarification in Appendix B thereof; and,
 - (c) failed to follow Texas Supreme Court holdings as applicable to the state law claims.
-

ON QUESTION [6] — During review for purposes of §1915, pro se complaints' allegations must be taken as true, (Cruz v. Beto, 405 U.S. 319, 322 (1972)), and "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Id. Additionally, even if a pro se litigant fails to cite the correct statute for the basis of a claim; as long as the alleged facts are sufficient to invoke the court's jurisdiction are present, the Complaint will stand. (see

Stanley v. Balogh, 2017 U.S. Dist. LEXIS 58974 at ¶47(n.3)

Note related at: Ball v. Hood, 327 U.S. 678, 682 (1946) (complaints which allege facts adequate to show a matter in controversy under law invoke a court's jurisdiction to decide whether the allegations state ANY cause of action on which a court can grant relief, as well as to determine issues of fact arising in controversy.)

Petitioner's claimed cause of action arose under "Texas Business & Commerce Code §17.41 et. seq." — and requested the court "liberally construe the pleadings in the interest of fairness and justice." (Original Complaint, pg. 1). §17.44 of Chapter 17, Subchapter E thereof states:

"(2) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection."

§17.45 (Definitions) states in relevant part:

"(4) 'Consumer' means an individual () who seeks () any goods or services ()."

while §17.45 includes "an individual () who () acquires by

purchas or lease, any goods or services," it does not exclude those who "seek () any goods or services" that might be obtained gratuitously — for example, from distributors' free samples of goods as incentive for potential customers to visit their store with "no purchase necessary;" that "FREE SAMPLE" is subject to DTPA regulation the same as products that are sold for cash and profit.

* The Courts below erred, because they did not afford LIBERAL CONSTRUCTION to the language of Texas's Deceptive Trade Practices Act as mandated by §17.44(e).

Additionally — there are FACTS stated in Petitioner's ORIGINAL COMPLAINT that raise the other causes of action. Under —

STATEMENT OF CLAIM:

(4-6) page 2-3 — Petitioner establishes basis for the Fiduciary Trust between GOOGLE, INC. and Petitioner;

(13) page 4-5, (18) page 5, (19) page 6 — Petitioner shows violation of that Fiduciary Trust. [See also (22) page 6]

(20) Petitioner establishes "Failure To warn" claim. (pg. 6)

(23) page 6-7 — Petitioner establishes "Deceptive Label" claim (child pornography labelled as "Family Naturalist" images).

Furthermore, APPENDIX B-ORIGINAL COMPLAINT, ~~Petitioner~~
Petitioner clarifies by Memorandum the issues of:

(a) GOOGLE, Inc.'s exclusive liability for the
Search Results's "thumbnail" images;

(b) deceptive presentation of the images
with lack of warning;

(c) the inherently dangerous nature of images
of nude children under present vague
and incoherent child pornography law;

(d) that the doctrine of Strict Liability
applied to Petitioner's Claims; and,

(e) that there was a marketing defect
claim/issue; and, that nude images
of children are an "unreasonably dangerous
product."

Even if Petitioner failed to cite the correct statute under
which his Claims are based — he nonetheless HAS
stated a set of Facts that, if proven at Trial, would
entitle him to Relief on/under state (if not Federal) Law.
Ergo DISMISSAL (with or without prejudice) was improper.

ON QUESTION [7] — Generally a District Court [or Court of Appeals] errs in dismissing a pro se complaint with prejudice for failure to state a claim under either §1915(e) or Rule 12(b)(6) without giving the plaintiff an opportunity to amend his complaint. Bazrowx v. Scott, 136 F.3d 1053, 1054 (5th Cir. 1998). An outright denial to allow opportunity to amend without justification is considered an abuse of discretion. See e.g. United States ex rel. Adrian v. Regents of the Univ. of Calif., 363 F.3d 398, 403 (5th Cir. 2004) citing Foman v. Davis, 371 U.S. 178, 182 (1962) (See also United States ex rel. Willard v. Humana Health Plan of Texas Inc., 336 F.3d 375, 386 (5th Cir. 2003).

Neither the District Court nor the Fifth Circuit even remotely suggested or offered Petitioner the opportunity for Amending his Complaint to cure whatever defects in pleadings the Courts asserted present. Nor was any reason given for not offering the opportunity to amend before dismissing WITH prejudice.

*NOTE: Petitioner ASKED FOR an opportunity to Amend the Complaint in his Petition for Rehearing's concluding PRAYER on December 26, 2020. (See page 9, Pet. for R'hng.)

Nonetheless — DISMISSAL WITH PREJUDICE was allowed to stand with NO opportunity to amend given.

In light of the Answers to/for the foregoing (7) Questions — it should be obvious that the Courts below abused their discretion; committed reversible errors; and, did not correctly apply or follow the Constitutional, Statutory, and Case Law relevant and applicable to Petitioner's Complaint against Google, Inc.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays this Honorable Court GRANT his petition for Writ of Certiorari to the FIFTH CIRCUIT Court of Appeals; and, that this Case be REVERSED and REMANDED for further proceedings consistent with the Opinion as may be entered by this Court.

Respectfully this 10th day of February 2021.

J. Logan Diez Pro Se
James Logan Diez #51285

P.O. Box 1098

(Burnet County Jail)

Burnet, TX 78611

Note on Service: Defendant-Respondent, GOOGLE, INC., was never SERVED with the Complaint nor required to Answer; and, has made no appearance at any stage in these proceedings, hence, has not been served a copy of this Petition. *J. Logan Diez*