

Supreme Court, U.S.

FILED

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No. 20-972

IN THE

## **Supreme Court of the United States**

IBEABUCHI, IKEMEFULA CHARLES Petitioner  
(Last, First, Middle)

v.

On Petition For writ Of Certiorari To The United States Court Of Appeals For The  
Ninth Circuit.

**PETITION FOR WRIT OF CERTIORARI**

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# ORIGINAL

Cover-Page.

**Questions Presented For Review.**

1. Whether or not, the Ninth Circuit Court of Appeals committed a Reversible Error, by concluding that, "the Petitioner fails to address how the District Court erred by dismissing his action for failure to state a claim"?
2. Whether or not, the Ninth Circuit Court of Appeals abused its Discretion by denying the Petitioner's timely filed, Petition for Panel Rehearing, which reiterated the Petitioner's Opening Brief for a Lost Legal Mail and which was the overlooked or misapprehended point of fact or law?
3. Whether or not, the Ninth Circuit Court of Appeals exceeded its Jurisdiction, therein, for the Plaintiff's Complaint, dismissed under Rule 12(b)(6), failure to state a claim, "under, Neitzke v. Williams 490 U.S. 319 (1989) 109 S.Ct., 1827, 104 L.Ed. 2d 338, at 326 and 329, which found by a 9-0, vote that it had in fact stated a cognizable claim" was specific to the factual case before it?

**Parties to Proceeding and Related Cases.**

Petitioner: (same)

Respondents: Jill Eggleston, Director of Operations for National  
Records Center.

G 6641, Thompson, Deportation Officer for U.S. Dep't of  
Homeland Security.

Secretary (Fmr.) John Kerry for U.S. Dep't of State

**Related Cases.**

This Case is Federal collaterally challenged in:

- *Ibeabuchi v. Penzone*, No. 18-cv-03911-PHX-JAT(JZB), U.S. District Court for the State of Arizona, Phoenix. Judgment entered, May 25, 2018.
- *Ibeabuchi v. Penzone*, No. 19-16049, U.S. Court of Appeals for the Ninth Circuit. Judgment entered, October 31, 2018.
- *Ibeabuchi v. Penzone*, Application For Extension Of Time To File A Petition For A Writ Of Certiorari, granted by Honorable Justice Kagan on, June 11, 2019 and whose Petition was filed on, June 26, 2019, according to the Proof of Mailing (Postmark) but, was not docketed, till date.  
(See, Appendix F)

## **Table of Contents.**

Opinions Below.....	1-2
Jurisdictional Statement.....	3
Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations involved in the Case.....	4
Statement of the Case.....	5-9
Reasons for Granting the Petition.....	10-15
Conclusion.....	16

## **Index to Appendices.**

Appendix A: Not For Publication; Court of Appeals Ninth Circuit's MEMORANDUM,  
entered on, April 13, 2020, by Judges Tashima, Bybee and Watford.  
(See, U.S.C.A., DktEntry: 12-1)

Appendix B: **Appealable Merit**; Lost Legal Mail of the United States District Court's  
ORDER, 2:17-cv-0450-JAT-JZB, entered on, February 26, 2019.  
(See, U.S.D.C., Document No. 12)

Appendix C: Not For Publication; Court of Appeals Ninth Circuit's ORDER, denying  
a timely filed Petition for Panel Rehearing, entered on, August 24,  
2020. (See, U.S.C.A., DktEntry: 14)

Appendix D: **Legal Admission**, (see, U.S.D.C., Document No. 15) by the United  
States District Court for Loss of Legal Mail containing the Court's

February 26, 2019's Order.

Appendix E: **Regulation for E-Filing** (GENERAL ORDER 14-17), August 22, 2014.

Appendix F: **Related Case**, Proof of Mailing and Account Balance Inmate

Consolidated Statement, All Transactions, 06/26/2019, for Amount  
\$4.55. Including the Director of Prisons' Response to the Inmate's  
Letter.

**Table of Citations and or Authorities.**

<b>Supreme Court Cases.</b>	<b>Page No.</b>
Bell v. Hood, 327 U.S. 678, 682-683 S. Ct., 773 776-76, 90 L. Ed. 939 (1946)	14
Brower v. County of Inyo, 489 U.S. 593, 103 S. Ct., 1378 108 L.Ed. 2d 628 (1989)	14
Hagans v. Levine, 415 U.S. 528, 536-537, 94 S. Ct., 1372, 1378-79, 39 L.Ed. 577 (1974)	14
Haines v. Kerner, 404 U.S. 519 (1972) 92 S. Ct., 594, 30 L.Ed. 2d 652 [520]	12
Neitzke v. Williams, 490 U.S. 319 (1989) 109 S. Ct., 1827, 104 L.Ed. 2d 338 [327] [329]	14

**United States Court Of Appeals' Cases.**

Byran v. Werner, 516 F. 2d 233, 238 (3d Cir., 1975)	3, 13
Greenwood v. FAA, 28 F.3d 971, 977 (9 <sup>th</sup> Cir., 1994)	7
Ibeabuchi v. Megwa, USAP9 No. 19-16706	12
Sanders v. U.S., 113 F. 3d 184, 187 (11 <sup>th</sup> Cir., 1997)	13
Smith v. Marsh, 194 F. 3d 1045, 1052 (9 <sup>th</sup> Cir., 1999)	7
U.S. v. Alden, 527 F.3d 653, 661-62 (7 <sup>th</sup> Cir., 2008)	6

**Statutes, Rules or Regulations.**

28 U.S.C. ss. 1254(1)	3, 9
28 U.S.C. ss. 1291	8
28 U.S.C. ss. 1915(d)	14
28 U.S.C. ss. 2101(c)	3
28 U.S.C. ss. 2255	13
42 U.S.C. ss. 1983	6, 14

**Supreme Court Rules.**

SCR 10	13
SCR 10(a)	3, 13
SCR 14.1(d)	1

**Federal Rules of Appellate Procedure.**

FRAP 4(a)(6)	1
FRAP 34(a)(2)	6, 8
FRAP 40(a)(2)	8
FRAP 40(a)(1)(B)	6

**Federal Rules of Civil Procedure.**

FRCP 12(b)(1)	14
FRCP 12(b)(6)	14

**Court of Appeals Ninth Circuit's Rules.**

9<sup>th</sup> Cir., Rul. 30-3 5, 15

9<sup>th</sup> Cir., Rul. 40-1 8

**Regulations.**

GENERAL ORDER 14-17 2, 5, 11, 14

IN THE

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

The Petitioner, respectfully, seeks review of the Opinions of the United States Court of Appeals Ninth Circuit and the United States District Court for Arizona below.

**Opinions Below.**

This Case originated from the Federal Courts.

The Opinion of the United States Court of Appeals appears at Appendix A, to the Petition and is published via PACER, non obstatnte the *Not For Publication*, evinced on the Face of the MEMORANDUM.

The Opinion of the United States District Court, the *Appealable Merit*, is not received, till date and exposito in Appendix B, as such.

The Court of Appeals Ninth Circuit's ORDER, denying a timely filed Petition for Panel Rehearing is appended at Appendix C and is published via PACER.

The United States District Court's ORDER, granting a Motion to Reopen the Time to file an Appeal, pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure, the *Legal Admission* appears at Appendix D and is published via PACER.

The United States District Court For The District Of Arizona's GENERAL ORDER

14-17, In the matter of: ELECTRONIC SUBMISSION OF PRISONER DOCUMENTS PILOT PROJECT, dated this 22<sup>nd</sup> day of August, 2014 and signed by Raner C. Collins, Chief Judge United States District Court is appended at Appendix E and is published via PACER, proceeding this particular case-in-fact.  
(See, U.S.D.C., Document No. 7)

Appendix E, is a Proof of the *Related Case*, as submitted to this Honorable Court on, June 26, 2019, through the Arizona Department of Corrections, South Unit, Deputy Warden Lori Stickley; yet, till date this Matter was never docketed. Thus, Filing was actualized to this Court Rules 13.1 and 13.3, respectively, and formed a basis for a Collateral Challenge in the Federal Jurisdiction and *Appealable Merit*, *sua sponte*.

**Basis for Jurisdiction in this Court.**

Because the Court of Appeals Ninth Circuit's MEMORANDUM, was issued on, April 13, 2020 and the Court of Appeals Ninth Circuit's ORDER, denying the Petitioner's timely filed Petition for a Panel Rehearing was issued on, August 24, 2020, there was no need for an Order granting an Extension of Time to file the Petition for a Writ of Certiorari, in that, the Petition is timely submitted to this Court, at-law. (See, 28 U.S.C. ss. 2101(c).)

Therefor, this Honorable Court is at Investiture and conferred of the Jurisdiction to grant a Petition for a Writ of Certiorari, stemming from the Court of Appeals Ninth Circuit, quare, of the United States Constitutional Article 111, and in, Chapter 28 of the United States Code, Section, 1254 (1).

Further, the basis for Jurisdiction of this Court is that, this Case-in-fact promotes a Review, consistent with the Conflict of Interest arising amongst the Decisions of a United States Court of Appeals on the same Important Matter, (see., SCR 10(a)) for, *Legal Mail*. Citing, e.g., in, Bryan v. Werner, 516 F. 2d 233, 238 (3d Cir., 1975) (Prison Officials have a Responsibility to promptly forward Mail to Inmate in their Custody.)

Thus, considerations should be granted on Review on Certiorari for the alighted disproportionate Judicial Countermand by the Court of Appeals Ninth Circuit's MEMORANDUM.

## **The Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations**

### **involved in the Case.**

The United States Constitutional Article, 111. (Adopted, 1787) Judiciary.

The United States Constitutional Amendment, 1. (Adopted, 1791) Freedom of Religion, Speech, Press, Assembly and Petition.

The United States Constitutional Amendment, 5. (Adopted, 1791) Security of Person and Possession for Prevention of Double Jeopardy; Right against Self Incrimination.

The United States Constitutional Amendment, 6. (Adopted, 1791) Fair, Speedy and Public Trial by Jury, Right to Counsel.

The United States Constitutional Amendment, 14. (Adopted, 1868) Guarantee of the Right to Citizenship.

Face and Declaratory Act, 28 U.S.C. ss. 1746.

Freedom of Information and Privacy Act, FOIA/PA.

**Statement of the Case.**

On, April 13, 2020, the Judges as qualified to the Court Structure and Procedures for the Middle Unit, 1 to-wit: A. Wallace Tashima (Senior Circuit Judge, Pasadena California); Jay S. Bybee (Circuit Judge, Las Vegas, Nevada) and Paul J. Watford (Circuit Judge, Pasadena, California) filed a MEMORANDUM, affirming the United States District Court's Order, which dismissed the Pro Se Petitioner's 42 U.S.C. ss. 1983, First Amended Complaint for failure to state a claim and with thirty (30) days leave to amend, therein. Whose, Order was never received by the Petitioner in Custody.

The Motions Panel, cumulatively, concurred that, the Disposition was not appropriate for publication and was not precedent except as provided by the Ninth Circuit Rule 36-3. 2 As, submitted, quare, the Panel, unanimously concluded that

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1See: FEDERAL RULES OF APPELLATE PROCEDURE NINTH CIRCUIT RULES, CIRCUIT ADVISORY COMMITTEE NOTES 1 DECEMBER 2019: JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, COURT STRUCTURE AND PROCEDURES, C. Judges and Supporting Personnel (1) Judges.

2See: (a) Not Precedent. Unpublished dispositions and orders of this Court are not Precedent, except when relevant under the doctrine of the law case or rules of claim preclusion or issue preclusion.

the Case was suitable for Decision without Oral Argument, citing, in, Fed. R. App. P. 34(a)(2). 3

The Motions Panel, acknowledged that, the Pro Se Petitioner's 42 U.S.C. ss. 1983, Constitutional Claims, arose out of the Petitioner's Immigration Detention and his Request for Documents under the Freedom of Information Act.

There, for, Standards in cases suitable for Decision without Oral Argument; (B), to-wit: the dispositive issue or issues have been authoritatively decided; includes the Pro Se Petitioner's Status, requiring a voluntary waiver of Attorney, 4 for Oral Argument. However, this dispositive issue was not, authoritatively decided, there, for the acknowledged by the Motions Panel, as, stated.

Quare; (A), the Appeal was not Frivolous, this Court, ergo, should grant the Petition to ascertain the Standards; (B) and (C), remaining on cases suitable for Decision with Oral Argument, as met for *Immigration Matter*, in that, the Petitioner

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3See: Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons: (A) the appeal is frivolous. (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

4See: Pursuant to the First Amended Complaint, (see, U.S.D.C., Document No. 10) Respondents were U.S. Agencies, (see, FRAP 40 (a)(1)(B)) which ultimately made the Petitioner a Non-Moving Party, *sua sponte*, allowing for a Waiver of Counsel to Self-Representation as provided by the Sixth Amendment. Citing, in, U.S. v. Alden, 527 F.3d 653, 661-62 (7<sup>th</sup> Cir., 2008)(Voluntary Waiver when Judge gave Defendant Ultimatum to accept Appointed Counsel, hire Private Counsel, or proceed Pro Se)

was the Subject in his FOIA Request and a subsequently, granted of a U.S. Citizenship at the time of the Complaint, herein. (See, U.S. Const. Amend. XIV)

Further, the Motions Panel was tacit with its Dictum and as analogized in the foregoing Exegesis, herein, *id est*:

*"In his opening brief, Ibeabuchi fails to address how the district court erred by dismissing his action for failure to state a claim. As a result, Ibeabuchi has waived his challenge to the district court's order: See Smith v. Marsh, 194 F.3d 1045, 1052 (9<sup>th</sup> Cir., 1999) ("[O]n appeal, arguments not raised by a party are deemed waived"); Greenwood v. FAA, 28 F.3d 971, 977 (9<sup>th</sup> Cir., 1994) ("We will not manufacture arguments for an appellant...") "We reject as meritless Ibeabuchi's contentions that the district court clerk's description of his motion to reopen the time to appeal was erroneous and that the district court should have granted him leave to amend *sua sponte*." "All pending motions are denied as moot." "AFFIRMED."*

By far, to the Petitioner's recharacterized Motion (without consent) by the United States District Court to reopen the time to appeal and which was granted, (see, U.S.D.C., Document No. 15) (see, Appendix D) was not factual to the lost *Legal Mail*, at the derelict of the Court and Prison Officials. Which was rejected as *meritless..., contentions* by the Motions Panel, non obstante the Mail was the Order of the United States District Court issued on, February 26, 2019, granting the Pro Se Petitioner, his Constitutional Due Process Right of an Opportunity to amend his Complaint, *sua sponte*, therein.

Accordingly, the Petitioner's *Opening Brief*, addressed the impediment caused by the lost *Legal Mail*, and the Reproof and Sophism construed in the Dictum, above. Which should suffice a Claim for which this Court should grant the Petition for a

Writ of Certiorari, herein and for the Doctrine of Res Ipsa Loquitur, at-law.

On, April 23, 2020, the Petitioner filed a timely Petition for a Panel Rehearing, FRAP 40(a)(2); 9<sup>th</sup> Cir., Rul. 40-1, (see, U.S.C.A., DktEntry: 13) and elucidated in pertinent part of the overlooked and misapprehended points of fact or law by the Motions Panel.

On, August 24, 2020, and after four (4) Months, period of filing said, Petition, the Merit Panel, 5 unwontedly, denied same, (see, U.S.C.A., DktEntry: 14), (Appendix C) to cause this Petition for a Writ of Certiorari, in this Court, most respectfully. Non obstante, therein, the Order, unprepossessingly, barred further Filings, without any Reasons, whatsoever, at-law. See, *No further filings will be entertained in this closed case.*

Because, the Appeal was not Frivolous and no Dispositive Issue or Issues have been authoritatively decided and the Facts and Legal Arguments were adequately presented in the Petitioner's Brief and Record, (without Respondents' Answer) requiring no oral Argument for Decisional Process; therefor, the Court of Appeals Ninth Circuit, denied the Petitioner's Due Process of Law, contained in the United States Constitutional Amendments 1,5,6, and 14, respectively, for *Decisional Process* and at its Jurisdictional Authority. (See, Fed. R. App. P. 34(a)(2), 28 U.S.C. ss. 1291)

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5See: Merit Panel consisting of the same Motions Panel. (See, Appendices A., C.)

Axiomatically, this Court retains the Jurisdiction to review the Decisions and Orders of the United States Court of Appeals, (see, 28 U.S.C. ss. 1254(1)) especially for Constitutional Questions, De Novo.

## **Reasons for Granting the Petition.**

The Court of Appeals Ninth Circuit, regrettably, omitted the review of the Content of the United States District Court's Order of February 26, 2019, which was appealed. And which granted the Petitioner the Opportunity to amend his Complaint, *sua sponte*, dismissing said Complaint for failure to state a claim. And which Order was never received by the Petitioner, as a matter of right, at-law. Thus, the *Appealable Merit*. (See, U.S.D.C., Document No. 12) (Appendix B, not appended))

The Petitioner, clearly, stated this Fact in his Petition for Panel Rehearing (see, U.S.C.A. DktEntry: 13) that his Appellant's Opening Brief at, Pages 2 and 3, respectively, informed the Court that:

*"Accordingly, the Appellant was not served the Legal Mail, bearing the Court's Order, which granted the Appellant the Leave to file a Second Amended Complaint within, 30 days from February 26, 2019 (Doc. 12, PACER)"*

*"Appellant, thereby, suffered a Constitutional Right, violation to Mail, *qua*, Service of Process. An, inherent, Abuse of Process of the Court and Prison Authorities. Which warrants an Appellate Review in the Order and Judgment (Doc. 13, PACER)"*

*"In the said, October 2, 2019, at Page-2-, the District Court, also acknowledged that, the Appellant was not served of the Judgment, which was transmitted to the Appellant's Unit, electronically, but, the Court failed to *sua sponte*, acknowledge the Prejudice, encountered by Appellant of the lost Opportunity to amend his First Complaint as granted in the District Court Order of February 26, 2019, and entered in the April, Judgment" (see DktEntry: 4-1, 10/17/2019)"*

Whose , Quiddity, quare, in the Petition for Panel Rehearing, is the overlooked and

misapprehended point of fact or law and the Reason to grant the Petition, herein, in jare.

Further, the Reason for the Failure to transmit the Legal Mail to the Petitioner was due to the faults of the United States District Court and conceded in its Order, (see, Appendix D) and of the Arizona Department of Corrections, as exposito in the GENERAL ORDER, (see, Appendix E)

It is noteworthy, that, the Agreement to transmit Legal Documents to Inmates was a combination of support buttressed by the GENERAL ORDER 14-17, signed by Chief Judge Collins Raner, United States District Court on, August 22, 2014 for Pilot Project, devised for Inmates Electronic Filings with the Federal Courts.

There, at Paragraph 5, recites that;

*"The Eyman Complex Units and the designated Lewis Complex Units will each establish an email address for receipt of NEFs of documents filed electronically. Staff in these Units will print the NEFs and the hyperlinked orders and other documents filed by the Court. Receipt of copies of the NEFs and hyperlinked documents by the prisoner constitutes service of the document on the prisoner. If the prisoner refuses delivery or is no longer at the designated Unit, Unit staff will indicate the reason for the non-delivery on the NEF and email it to the Court."*

Thus, a Plethora of Evidence exist to counternance the burden of withal of the *Lost Legal mail* and the *Appealable Merit*, per se, herein. And whose Exporpriation was conceded in Appendix D.

There, also, at Page -2-, Lines 14-20, the United States District Court admitted

that:

*"Plaintiff denies ever receiving a copy of the April 11, 2019 Judgment. Court records reflect that a copy of the Judgment was electronically transmitted to Plaintiff's unit, but the Court recognizes that the copy may not have been delivered to Plaintiff, and he represents that he did not learn of entry of judgment until a footnote in another one of his cases stated as much. Accordingly, the first requirement is satisfied. Plaintiff filed the instant motion within 180 days of the entry of judgment and the Court finds that no party will be prejudiced by reopening the time for appeal"*

Again, an Abuse of Discretion is evinced in the Extent of Review to the Responsibility Testimonial, wherein, the same Judge should have wantedly, (see, e.g., in, *Ibeabuchi v. Megwa*, No. 19-16706) (see, U.S.D.C., Document No. 32) (U.S. Court of Appeals for the Ninth Circuit, Judgment, pending) issue a Praecept to serve Process of the admitted Lost Legal Mail, pursuant to timeliness of the Appeal of 180 days of entry of Judgment. Rather, the resultant denial of Due Process of the Pro Se Indigent Petitioner's Opportunity to Second Amended Complaint.

See, e.g., in, *Haines v Kerner*, 404 U.S. 519 (1972) 92 S.Ct., 594, 30 L.Ed. 2d 652, 16, at \*520, there, this Honorable Court, *granted Certiorari and appointed Counsel to represent Petitioner*. The only issue now before that Court, likewise, here, is the Petitioner's *Contention* that the District Court erred in dismissing his Pro Se Complaint without allowing him to present evidence on his claims. Thus, this Court discerned, that,

*"For whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings*

*drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"*

Appositely, for, *this court granted Certiorari and appointed Counsel to represent Petitioner*, this Court should grant the Petition, herein, in jare.

Another, Reason for granting the Petition is the inherent, Excusable Neglect, abound to the Delivery of Legal Mail. See, e.g., in, Bryan v. Werner, 516 F.2d 233, 238 (3d Cir., 1975) (Prison Officials have a Responsibility to promptly forward Mail to Inmates in their Custody.) Compare to; e.g., in, Sanders v. U.S., 113 F.3d 184, 187 (11<sup>th</sup> Cir., 1997) (Dismissal vacated and remanded when Prisoner contented he had not received Court Order denying ss. 2255 Relief until after Appeals Period expired.)

A priori, is indicative and facial plausibility to suffice a claim for Relief. Wherein, the Decision of the Court of Appeals Ninth Circuit conflicts and countmands the Decisions of the Courts of Appeals, Third Circuit and Eleventh Circuit, respectively, in jare. Accordingly, this Court grants a Judicial Discretion in review to such Important Matter. (See, SCR 10 and SCR 10(a))

The Petitioner suffered an enormous amount of Abuse, resulting from the En Autre Doit- Appeal Process to resolving an existing Grant of Relief of Opportunity to Amend Complaint as expounded in this Petition; thus, the Reversible Error of the

Court, therein.

In, Neitzke v. Williams 490 U.S. 319 (1989) 109 S.Ct. 1827, 104 L.Ed. 2d 338, at 327 and 329, this Court opined; that,

*"What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support. A patently insubstantial complaint may be dismissed, for example, for want of subject-jurisdiction under Federal Rule of Civil Procedure 12(b)(1). See, e.g., Hagans v Lavine, 415 U.S. 528, 536-537, 94 S.Ct. 1372, 1378-79, 39 L. Ed.2d 577 (1974) (federal courts lack power to entertain claims that are "'so attenuated and unsubstantial as to be absolutely devoid of merit'"') (citation omitted); Bell v. Hood, 327 U.S. 678, 682-683, 66 S.Ct. 773, 776-76, 90 L.Ed. 939 (1946). "Indeed, we recently reviewed the dismissal under Rule 12(b)(6) of a complaint based on 42 U.S.C. ss 1983 and found by a 9-to-0 vote that it had, in fact, stated a cognizable claim-- a powerful illustration that a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit. See Brower v. County of Inyo, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed. 2d 628 (1989). That frivolousness in the ss. 1915(d) context refers to a more limited set of claims than does Rule 12 (b) (6) accords, moreover, with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous..."*

[T]he United States District Court's Witticism, ...but the Court recognizes that the copy may not have been delivered to Plaintiff..., was sufficient indicia of reliability to conclude, that the GENERAL ORDER 14-17's Stipulation at Paragraph 5, was breached to the ...Unit Staff will indicate the reason for non-delivery on the NEF and email it to the Court. Which Reason epitomizes accountability for non-delivery of said, Legal Mail, the *Appealable Merit*, therein.

Therefor, this Petition should be granted for the Reason stated, *qua supra*.

Finally, the Reason for granting the Petition, is also found in the Ninth Circuit Rule

### 30-3 PRISONER APPEALS WITHOUT REPRESENTATION BY COUNSEL.

There, the Ninth Circuit Court of Appeals Rule 30-3, recites, that:

*"In cases involving appeals by prisoners not represented by counsel, the clerk of the district court shall, within 21 days from the receipt of the prisoner's written request, forward to the prisoner copies of the documents comprising the excerpts of record, so that the prisoner can prepare the briefs on appeal. If the prisoner was granted leave to proceed in forma pauperis at the district court or on appeal, the copies will be produced at no charge to the prisoner: (Rev. 12/1/09; 6/1/19)"*

The Petitioner's "Written Request" (see, U.S.D.C. Document No. 20) upon this Rule, which was filed of February 18, 2020, was abnegated by the United States District Court, (see, U.S.D.C. Document No. 21) filed on, February 24, 2020's Order. The Ample Opportunity to cure the loss of Legal Mail was tacitly, wreaked and suppressed, consequently, depriving the Petitioner of his United States Constitutional Amendment, Fourteen, for, Equal Protection. Thus, the

In Excess of Jurisdiction, herein.

In *fraudem legis* of the United States District Court is a *fortiori* to grant the Petition, herein.

**Conclusion.**

Wherefor, the Petitioner, respectfully, requests this Court grants the Petition, in  
jare.

Date: October 19, 2020

Charles Ibeabuchi  
IBEABUCHI, IKEMEFULA CHARLES  
Petitioner, qua, Pro Se status.