

Leihinahina Sullivan, Pro Se Petitioner
90 FDC Honolulu. #09779122
P O Box 30080
Honolulu, Hawaii 96820

21 - 5979

IN THE

Leihinahina Sullivan — PETITIONER
(Your Name)

Reneau Kennedy, et al. - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
OCT 14 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leihinahina Sullivan, Pro Se - Petitioner
(Your Name)

90 FDC Honolulu PO Box 30080
(Address)

Honolulu, Hawaii 96820
(City, State, Zip Code)

n/a
(Phone Number)

In the District Court memorandum opinion, the District Court properly acknowledged that in a case such as this, where I (plaintiff) is proceeding pro se, the sufficiency of the complaint is measured by the standards which are substantially less stringent than those which govern when professional counsel drafts the complaint (Haines v. Kerner, 404 U.S. 519, 30 L. Ed 2d 652, 92 S. Ct. 594 (1972)) and "Leave to amend should be granted even if no request to amend the pleading was made, unless the court determines that the pleading could not possibly be cured by allegation of other facts." I am going to file this, hence use of paper/pencil. Questions Presented

- (1) Does a judge vested by statute to subpoena a criminal defendant's treating psychotherapist-patient records, cannot over a criminal defendant's expressed objection in a sua sponte competency hearing to determine if a criminal defendant can represent herself pro se when defendant did not waive her privilege to her treating psychotherapist-patient relationship? (cited Jaffee v. Redmond, 518 U.S. 1 (1996) and Trammel v. United States, 445 U.S. 40, 51 (1980)).
- (2) Does the 41 pages of criminal defendant's treating psychotherapist-patient records subpoenaed over criminal defendant's objection, then transferred into the possession of a contracted ^(defendant) psychologist by judge, liable for actual damages when psychologist transcribed all 41 pages on to a competency report which was then distributed via email to adversarial counsel Assistant Attorney for the United States ("AUSA") Perlmuter and other recipients, liable for her actions for actual damages sustained by plaintiff and other remedies?
- (3) Did District Court err when deciding that defendant is immuned from monetary relief under 28 U.S.C. § 1915(c)(2) as a federal actor, District Court then applied Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and failed to give pro se an opportunity to amend her complaint to include damages under the Federal Tort Claims Act ("FTCA") when plaintiff had plausibly alleged all six FTCA elements under 28 U.S.C. § 1334(b)(1), not only to state a claim upon which relief could be granted but also for the court to have subject matter jurisdiction, so even though the District Court's ruling in effect deprived it of jurisdiction the District Court necessarily passed on the substance of an FTCA claims? (See Brownback v. King, 917 F.3d 409, 2019 U.S. App. LEXIS 5438 (6th Cir.) (6th Cir. Mich., February 25, 2019))
- (4) Did the United States Court of Appeals for the Ninth Circuit decide on the merits of the case when they concluded the appeal of District Court's decision was frivolous under 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious)?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Civil Action No. 21-00235 JAO-RT (Dist. of Haw. 2021)

United States Court of Appeals for the Ninth Circuit No. 21-16123

CR No. 17-cr-00104-JMS-KJM (Haw Dist. 2017)

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APPENDIX I United States Court of Appeals for the Ninth Circuit No. 21-16123 Order

Appendix J Request Application to Proceed In Forma Paupers By A Prisoner AS Situation Changed

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix I to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or, (Sept. 17, 2021)
 is unpublished.

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

reported at 2021 U.S. Dist. LEXIS 117022 (D. Haw., June 23, 2021)
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

1.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was September 17, 2021 (No Petition for Rehearing Was Allowed) Appendix I
"No further filings will be entertained in this case." Id.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. —A—.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.
 A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. —A—.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

2.

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
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| <u>Douglas Brownback, et al. Petitioners v. James King</u> 141 S. Ct. 740; 209 L. Ed. 2d 33, 2021 U.S. LEXIS 1198 (2021) | 7 |
| <u>Eckson v. Pardus</u> , 551 U.S. 89 (1994) | |
| <u>Jaffee v. Redmond</u> , 518 U.S. 1 (1996) | 5-6 |
| <u>Haines v. Kerner</u> , 404 U.S. 519, 30 L. Ed. 2d 652 (1972) | |
| <u>Trammel v. United States</u> , 445 U.S. 40 (1980) | 5-6 |
| <u>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</u> , 403 U.S. 388 (1971) | 7 |

STATUTES AND RULES

- 28 U.S.C. § 1915
- 28 U.S.C. § 1346
- 18 U.S.C. § 4241
- 28 U.S.C. § 1391
- 28 U.S.C. § 1331

OTHER

- U.S. Const. Amend. IV & XIV

STATEMENT OF THE CASE

On January 26, 2021 in Criminal Case No. 17-cr-00104-JMS-KJM (Dist. Haw. 2017) ECF No. 1048, Honorable Chief Administrative Judge J. Michael Seabright court ordered, over my objections (Defendant Sullivan) "patient records involving mental health treatment with psychiatrist Dr. Ethan Pieri", Defendant Sullivan's treating physician (Appendix A, Exhibit B). These records are protected by the psychotherapist-patient privilege as confidential communications between a licensed psychotherapist and patient in the course of diagnosis or treatment. See Jaffee v. Redmond, 518 U.S. 1 (1996). The Court found that Defendant Sullivan had waived her psychotherapist-patient privilege for purposes of disclosing the records containing privileged communications and notes to the court to the extent they bear on the issue of a Court-ordered competency evaluation with an independent examiner and my right to self-representation. (Appendix A, Exhibit B). I did not waive my rights and Judge Seabright could not cite to any hearing transcripts, in fact in Judge Seabright's Order to disclose my records in the custody of my treating psychiatrist in the custody of Dr. Ethan Pieri, he stated "over the defendant's objection" (Appendix A, Exhibit B). Those records then were given to Dr. Reneau Kennedy Ed. D. Clinical & Forensic Psychology by Judge Seabright (Criminal Case No. 17-cr-00104-JMS-KJM (Dist. of Haw. 2017) ECF No. 1054 & ECF No. 1108) (See Appendix A pp. 3). On March 4, 2021, Dr. Kennedy sent an email to Judge Seabright, me, adversarial Counsel AUSA Perlmutter and others with an attached report that contained all 41 pages of my psychotherapist-patient records that Judge Seabright gave her which she transcribed onto the report. In Criminal Case No. 17-cr-00104-JMS-KJM (Dist. of Haw. 2017) ECF Nos. 1054 & 1108, Judge Seabright ordered that the report go to him, no one else, whereupon he would redact and distribute, due to the issue of the psychotherapist-patient privilege records, Dr. Kennedy failed to follow court orders and violated Federal & State statutes as she did not get "informed consent".

when she distributed that report on March 4, 2021 (Appendix A, Exhibit A) in the email. The psychotherapist-patient records had private matters, information about the ongoing criminal ^{case} my weaknesses, everything which now was in the hands of adversarial counsel AUSA Perlmuter and others. I was so upset, and responded immediately to the email thread, expressing this. (Appendix A, Exhibit A). The Court did nothing, and on March 14, 2021 I wrote a letter to Judge Seabright which was filed in the Criminal Case as ECF No. 1067 CR No. 17-cr-00104-JMS-KJM, and in Appendix C ECF No. 11-1, and stated that I could not have a fair trial as now everything is an "open book to AUSA" Id. Court still, did nothing and, in the end, even without the report I retained my pro se status. On May 18, 2021 I filed my initial complaint in Civ. No. 21-00235 JAO-RT ECF No. 1 Appendix A, bringing suit against Dr. Kennedy for her actions. I did not hear back from Hawaii District Federal Court so I requested an application to proceed pro paupers, then on June 10, 2021, while pretrial incarcerated at the Honolulu Federal Detention Center ("FDC") I received ECF No. 8 Order Dismissing My Complaint and Denying My IFP Application and Motion to Receive One (Appendix B). On June 21, 2021, I filed a Motion For Reconsideration (Appendix C) and on June 23, 2021, my, Motion For Reconsideration (Appendix C) was denied. On June 30, 2021, I appealed the District Court's Decision to the Ninth Circuit. On July 15, 2021, the Ninth Circuit docketed my opening brief (See Appendix E, F). On July 23, 2021, an order was filed by the Ninth Circuit stating that "A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at anytime, if the court determines the case is frivolous. See 28 U.S.C. § 1915(c)(2)." See Appendix G. On September 17, 2021, the Ninth Circuit determined and concluded that the appeal was frivolous. See Appendix I.

I. II) A Judge Vested By Statute to Subpoena a Criminal Defendant's Treating Psychotherapist - Patient Records, Cannot Over a Criminal Defendant's Expressed Objection In A Sua Sponte Competency Hearing To Determine If A Criminal Defendant Can Represent Herself Pro Se When Defendant Did Not Waive Her Privilege to Her Treating Psychotherapist - Patient Relationship

This Court should find that a judge cannot order a criminal defendant's treating psychotherapist - patient records over a criminal defendant's expressed objection. The United States Supreme Court in Jaffee v. Redmond, 518 U.S. 1, 8, 135 L.Ed.2d 337, 116 S.Ct. 1923 (1996)

where an individual U.S. Constitutional fundamental Substantial due process rights to privacy, are protected patient-client privilege, where patient-client privilege protecting confidential communications with a psychiatrist and their patient "promotes sufficiently important interests to outweigh the need for probative evidence... citing Trammel v. United States, 445 U.S. 40, 51 [1980]. In Trammel, the United States Supreme Court stated, like the Spousal and attorney client privileges, the psychotherapist-patient privilege is "rooted in the imperative need for confidence and trust." Trammel, Id. at 51. In addition, the United States Supreme Court in Jaffee (which cites to Trammel), flatly rejected the suggestion that the privilege was subject to a balancing test. Jaffee, 518 U.S. at 17, 116 S.Ct. at 1932. In cr. case no. 17-cr-00104-JMS-KJM (Haw. Dist. 2017) ("Criminal Case") ECF No. 1042, Plaintiff Sullivan (Defendant Sullivan in Criminal Case) stated "If the Court orders disclosure of my records over Sullivan's Objections, then Sullivan request that only the Court review it *in camera* and any further review be under a protective order if disclosed to Dr. Kennedy and that the Government not be given any access to her medical records." Id. at ECF No. Page 10# 10669. On January 26, 2021 Id. at ECF No. 1047, the Court ordered that Dr. Kennedy submit her supplemental report to the Court first, Court will review and make redactions, if any or necessary, before the supplemental report is provided to Government. That did not happen, resulting in Civ. lawsuit against Dr. Kennedy.

II. Dr. Kennedy Should Be Held Liable For Actual Damages For Her Actions In Distributing 41 pages of Sullivan's Treating Psychotherapist - Patient Records When Sullivan Can Prove Actual Damages (Tort)

Sullivan can prove actual damages as after the tort occurred Sullivan's healthcare cost increased (services & medications) and Sullivan forced to take a plea in her criminal case due to the information revealed by Dr. Kennedy.

FROM: 09779122

TO:

SUBJECT: III. District Court Erred & IV. 9th Cir. Order

DATE: 10/03/2021 07:11:21 PM

III. District Court Erred When Deciding that Defendant Dr. Kennedy Is Immune From Monetary Relief Under 28 U.S.C. Section 1915(e)(2) As A Federal Actor, District Court Then Applied Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and Failed to Give Pro Se Plaintiff An Opportunity To Amend Her Complaint to Include Damages Under the Federal Torts Claim Act ("FTCA") When Plaintiff Had Plausibly Alleged Six FTCA Elements Under 28 U.S.C.S. Section 1346(b)(1), Not Only to State A Claim Upon Which Relief Could Be Granted But Also For The Court To Have Subject Matter Jurisdiction, So Even Though the District Court's Ruling In Effect Deprived It of Jurisdiction the District Court Necessarily Passed On The Substance Of The FTCA Claims (See Brownback v. King, 917 F.3d 409, 2019 U.S. App. LEXIS 5438 (6th Cir.) (6th Cir. Mich., February 25, 2019))

In the District Court decision to deny my claim for lack of jurisdiction (Appendix B), the District Court recites the same facts in the background with the exception for clarity that it was Judge Seabright that had provided Plaintiff Sullivan's treating psychological-patient records to Defendant Dr. Kennedy. Plaintiff Sullivan did state a claim for damages in her Initial Complaint (Appendix A) and in District Court decision, it did not allow Plaintiff Sullivan to amended her complaint as it would be futile citing to Plaintiff's Sullivan request for an In Forma Pauperis Application (Appendix J) filed on June 4, 2021, Statute, 28 U.S.C. Section 1915(e). Based on my Initial Complaint, my status as an indigent Pro Se Plaintiff, there is enough facts provided that the District Court should have allowed me to amend my complaint to include the FTCA Claims as it alleged six of the FTCA elements and et. al to include the United States for the action of its contractor which the District Court determined was a "federal actor" and therefore was quasi-judicial immune from monetary damages. (See Appendix B Pp. 4). The District Court applied Bivens v. Six Unknown Agents of the Federal Bureau of Narcotic, 403 U.S. 388 (1971) to the Constitutional Claims but failed to address the actual tort claim (her actions of not obtaining informed consent for psychotherapist-patient records she received from the Courts then she distributed those records in violation of State and Federal laws causing harm to Plaintiff Sullivan) of what Dr. Kennedy did which is in the initial complaint. District Court error in not allowing Plaintiff to amend her complaint as District Court decision should be reversed and Plaintiff Sullivan be allowed to amend her complaint. (Brownback v. King, 917 v. F.3d 409, 2019 U.S. App. LEXIS 5438 (6th Cir.)(6th Cir. Mich., February 25, 2019)).

IV. The United States Court of Appeals for the Ninth Circuit Decided On the Merits Of The Case When They Concluded The Appeal was frivolous under 28 U.S.C. Section 1915(e)(2) (Appendix I)

Brownback v. King applies in this case when the United Court of Appeals for the Ninth Circuit decided on the merits of the case as "frivolous" which is unclear on the record as to what, therefore Ninth Circuit Order should be reversed.

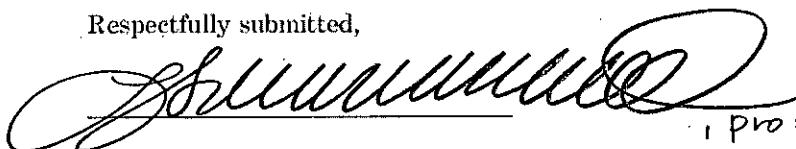
This Petition should be granted as it is timely as in the "Age of COVID" more individuals seek psychiatric/psychological care, and if that care can be subjected to a balancing test when individuals seek to represent themselves pro se in Criminal cases. In addition, as to Federal Actors, such as psychologist, can they be held liable to individuals when they fail to follow established law, informed consent in keeping patient psychological records confidential (negligent-tort).

Therefore, this Court should grant my Petition, respectfully. I apologize for having to use pencil and rubbish/recycled paper for this pleading but I am given no tools and outdated material while pretrial incarcerated at FDC-Honolulu. I am enclosing this pleading into the internal mail at FDC-Honolulu on October 3, 2021.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



, pro se Petitioner

Date: September 3, 2021