Appendix A

LEIHINAHINA SULLIVAN, PRO SE PLAINTIFF
C/O YWCA Fernhurst Residence
1566 Wilder Avenue, #320
Honolulu, Hawaii 96822

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LEIHINAHINA SULLIVAN, *Plaintiff,* v. RENEAU KENNEDY, Ed.D. CLINICAL & FORENSIC PSYCHOLOGY, ET. AL; JOHN & JANE DOES 1-100, *Defendants.*	Civil Action No. **21-00235 JAO-RT** INITIAL COMPLAINT; EXHIBIT A & B.

COMPLAINT

Pro Se Plaintiff, Leihinahina Sullivan, hereby brings this Complaint against Reneau Kennedy, Ed.D. Clinical & Forensic Psychology, et. al; John & Jane Does 1-100 ("Defendants"). Sullivan is pro se, therefore, her pleadings should be liberally construed, "benefit of liberal construction," *Porter v. Ollison*, 620 F.3d 952, 958 (9th Cir. 2010); *See Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed 2d 1081 (2007)("A document filed by pro se is to be liberally construed.") In addition, the Court may not dismiss a claim because pro se litigant failed to set forth a complete legal theory supporting the claims alleged. *See Johnson v. City of Shelby*, 524 U.S. 10, 135 S.Ct. 346, 346, 190 L.Ed 2d 309 (2014)(per curiam). The Ninth Circuit instructs courts to "construe pro se filings liberally" *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Because plaintiff proceeds pro se, her pleading is liberally construed and her complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings

Exhibit D

Dkt. 1

drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks omitted); *Pouncil v. Tilton*, 704 F.3d 568, 575-76 (9th Cir. 2012) (the rule of liberal construction "protects the rights of pro se litigants to self-representation and meaningful access to the Courts"). In support thereof, on personal knowledge as well as information and belief, Pro Se Plaintiff alleges the following:

NATURE OF THE ACTION

1. Plaintiff is a pro se defendant in *Cr. Case No. 17-00104 JMS-KJM* (D. Haw.). She brings this action against Defendants to hold them accountable for their unlawful disclosure of her private psychological records to AUSA Perlmutter in violation of Pro Se Plaintiff's *Fourth & Fourteenth Amendment to the United States Constitution*, and *Privacy Rights* when Honorable Federal District Court of Hawaii Chief Administrative Judge J. Michael Seabright ("Judge Seabright") ordered sua sponte (*See Cr. Case No. 17-00104 JMS-KJM (D. Haw.) ECF No. 1011*) a competency examination pursuant to *18 U.S.C. § 4241* over Plaintiff's objection (*See Cr. Case No. 17-00104 JMS-KJM (D. Haw.) ECF No. 1042 Sullivan's Brief that a Judge Vested by Statute to Subpoena a Criminal Defendant's Psychiatric Records, Cannot Over a Defendant's Express Objection in a Sua Sponte Competency Hearing when the Defendant Did Not Waive Her Privilege to Her Psychotherapist-Patient Relationship*) subpoenaed Plaintiff's psychological medical records from her treating psychiatrist Dr. Ethan Pien, M.D. over Plaintiff's objection.

2. Pro Se Plaintiff Leihinahina Sullivan ("Sullivan") respectfully submits this Initial Complaint ("Complaint") for violation of her *Fourth & Fourteenth Amendment Right to the United States Constitution*, and *Privacy Rights* when Judge Seabright subpoenaed Sullivan's psychological medical records from her treating Psychiatrist Dr. Ethan Pien, M.D. (*See ECF Nos. 1008, 1042, 1046, & 1048 Cr. Case No. 17-00104 JMS-KJM* [D. Haw.]) over Sullivan's objection and gave it to Court Appointed Dr. Kennedy who then transcribed those private

psychological and medical records on to a competency report ordered sua sponte by Judge Seabright (Id.) that was distributed electronically by email to Judge Seabright, Plaintiff, and adversarial counsel AUSA Perlmutter on March 4, 2021 (*See Exhibit A*).

3. On September 30, 2020, Judge Seabright ordered sua sponte that Plaintiff undergo a mental competency examination pursuant to 18 U.S.C. § 4241. *See ECF No. 1011 Cr. Case No. 17-00104 JMS-KJM* [D. Haw.] over Plaintiff's objections.

4. On January 15, 2021, Judge Seabright held a hearing to determine Plaintiff's ability to represent pro se in *Cr. Case No. 17-00104 JMS-KJM [D. Haw.] (Id. at ECF No. 1038)* and ordered simultaneous briefing from Plaintiff and adversarial counsel AUSA Rebecca Perlmutter Simultaneous as to the competency evaluation due by noon on January 21, 2021.

5. On January 21, 2021, Plaintiff filed *Id. at ECF No. 1042 Sullivan's Brief that a Judge Vested by Statute to Subpoena a Criminal Defendant's Psychiatric Records, Cannot Over a Defendant's Express Objection in a Sua Sponte Competency Hearing when the Defendant Did Not Waive Her Privilege to Her Psychotherapist-Patient Relationship.*

6. On January 26, 2021 (*Id. at ECF No. 1047*), over Plaintiff's objection, Judge Seabright ordered that he would subpoena Plaintiff's psychological medical records from her Psychiatrist Ethan Pien, M.D.

7. On January 27, 2021 (*Id. at 1048)* Judge Seabright signed *ORDER REGARDING DISCLOSURE OF DEFENDANT'S PSYCHIATRIC RECORDS IN THE CUSTODY OF DR. ETHAN PIEN as to Leihinahina Sullivan* (*Exhibit B*).

8. Judge Seabright then gave those confidential psychiatric records referred to in Item 4, 5, & 6 to this Complaint to Dr. Kennedy. See *Cr. Case No. 17-00104 JMS-KJM [D. Haw.] ECF No. 1054* February 11, 2021 & *ECF No. 1108* May 12. 2021.

9. On March 4, 2021, Dr. Kennedy sent an email to everyone, including adversary AUSA Perlmutter (*See Exhibit A*) where she attached her "Final Competency Report" ("Report") which Dr. Kennedy transcribed forty-one of those confidential psychiatric medical records from Psychiatrist Dr. Pien onto the Report in violation of Sullivan's *Fourth & Fourteenth Amendment Rights to the United States Constitution*, and *Privacy Rights* as it was Court Ordered and contracted to Dr. Kennedy by Judge Seabright.

10. On March 4, 2021, Plaintiff responded in the email thread started by Dr. Kennedy objecting to what she did, there was no response from Judge Seabright or adversarial counsel AUSA Perlmutter which Plaintiff has a pending civil claim for doing the same thing *in Civ. Case. No. 20-00269 LEK-KJM* (D.Haw.) (*Exhibit A*), which caused injury to Plaintiff.

11. Plaintiff brings this action to vindicate her rights under the United States Constitution Fourth & Fourteenth Amendment Rights and Privacy Rights to recover damages, as well as reasonable attorneys' fees and costs.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to *28 U.S.C. § 1331* and because this action arises under the *United States Constitution Fourth & Fourteenth Amendment Rights* and *Privacy Rights* as Defendant was hired by Judge Seabright to conduct a Competency Examination to determine whether Plaintiff could represent herself Pro Se in *Cr. Case No. 17-00104 JMS-KJM* [D. Haw.].

13. Venue is proper in this district under *28 U.S.C. §§ 1391.* Plaintiff resides in the District of Hawaii, and a substantial part of Defendants' unlawful acts giving rise to her claims occurred in this district.

PARTIES

14. Plaintiff Pro Se Leihinahina Sullivan is a citizen of the United States and a resident of the District of Hawaii. She has been a pretrial Pro Se defendant not yet convicted of a crime in *Cr. Case No. 17-00104 JMS-KJM* [D. Haw.] for over four years.

15. Defendant Dr. Kennedy is a Federal vendor contracted by Judge Seabright to complete a Competency Examination to determine whether Plaintiff could represent herself Pro Se in *Cr. Case No. 17-00104 JMS-KJM* [D. Haw.].

FACTUAL ALLEGATIONS

Sullivan incorporates line items 1-15 In This Complaint as Factual Allegations

16. Defendant violated Sullivan's Constitutional Protections to "Privacy" in two different kinds of interests: one, "interest in avoiding disclosure of personal matters" (429 U.S., at 598–599, and n. 25 (citing *Olmstead v. United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting) (describing "the right to be let alone" as "the right most valued by civilized men"); *Griswold v. Connecticut*, 381 U. S. 479, 483 (1965) ("[T]he First Amendment has a penumbra where privacy is protected from governmental intrusion"); *Stanley v. Georgia*, 394 U. S. 557, 559, 568 (1969); *California Bankers Assn. v. Shultz*, 416 U. S. 21, 79 (1974) (Douglas, J., dissenting); and *Id.*, at 78 (Powell, J., concurring)) the other, an interest in "making certain kinds of important decisions" free from government interference. 429 U. S., at 599–600, and n. 26 (citing *Roe v. Wade*, 410 U. S. 113 (1973); *Doe v. Bolton*, 410 U. S. 179 (1973); *Loving v. Virginia*, 388 U. S. 1 (1967); *Griswold v. Connecticut*, supra; *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Meyer v. Nebraska*, 262 U. S. 390 (1923); and *Allgeyer v. Louisiana*, 165 U. S. 587 (1897)) and free from interference for Plaintiff to provide a defense for herself as a Pro Se Defendant *Cr. Case No. 17-00104 JMS-KJM* [D. Haw.].

17. As a hired contractor by Judge Seabright, Defendant violated recognized statutory and Constitutional Right and Plaintiff files this complaint to deter any further illegal conduct by Defendant which was intentional.

18. Plaintiff brings this action to vindicate her rights which will be donated equally to *Touch a Heart* Program, *YWCA of Oahu Fernhurst Programs*, and *YWCA of Oahu Laniakea Dress for Success Program*, as well as reasonable attorneys' fees and costs.

19. Plaintiff brings this action to vindicate her rights based on the improper disclosure of forty-one records of Sullivan's confidential medical and psychiatric healthcare from her treating Psychiatrist Ethan Pien, M.D. over her objections to Defendant who shared it with adversarial counsel AUSA Perlmutter which Plaintiff has a pending civil claim for doing the same thing in *Civ. Case. No. 20-00269 LEK-KJM* (D. Haw.).

Defendant's Disclosure Has Caused Severe Harm to Plaintiff

20. In *United States v. Sullivan, No. 1:17-cr-00104 (D. Haw.) Dkt. No. 1108* gives other harm that has occurred because of Defendant's actions which includes but not limited to cost of therapy to cope with this ongoing disclosure.

COUNT I: VIOLATION OF SULLIVAN'S PRIVACY; DISCLOSURE OF CONFIDENTIAL MEDICAL RECORDS TO ADVERSIAL COUNSEL AUSA REBECCA PERLMUTTER OVER PLAINTIFF'S OBJECTION

21. The paragraphs above are incorporated and reasserted as if fully set forth herein.

22. Plaintiff Sues Dr. Kennedy, in her capacity as a contractor for Judge Seabright, for actual damages sustained by Plaintiff and reasonable attorney's fees and costs as provided for under the United States Constitution Fourth & Fourteenth Amendment Rights and Privacy Rights to recover damages (*28 U.S.C. § 1331*), as well as reasonable attorneys' fees and costs.

23. Under *Article III* of the Constitution, federal courts can hear "all cases, in law and equity, arising under this Constitution, [and] the laws of the United States..." *US Const, Art III, Sec 2*. The Supreme Court has interpreted this clause broadly, finding that it allows federal courts to hear any case in which there is a federal ingredient. *Osborn v. Bank of the United States*, 9 Wheat. (22 U.S.) 738 (1824).

24. *28 USC 1331* - The Statutory Component for federal question jurisdiction to exist, the requirements of *28 USC 1331* must also be met. This statute gives federal courts jurisdiction only to those cases which "aris[e] under" federal law. *28 USC 1331*. This requirement has been found to be narrower than the requirements of the constitution. The Supreme Court has found that a "suit arises under the law that creates the cause of action," *American Well Works v. Layne*, 241 US 257 (1916), and therefore, only suits based on federal law, not state law suits, are most likely to create federal question jurisdiction, *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908).

25. For the aforementioned reasons Sullivan brings this action. tort

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that judgement be entered against Defendant and that the Court grant the following:

a. award Plaintiff actual damages, the exact amount of which to be determined at trial;

b. award Plaintiff reasonable attorneys' fees and costs;

c. award such other relief as this Court deems just.

JURY DEMAND

Plaintiff requests trial by jury.

Dated: May 18, 2021 /s/ Leihinahina Sullivan, Pro Se Plaintiff

EXHIBIT A

Final Report for L. Sullivan

From: Reneau Kennedy Thu, Mar 4, 2021 at 1:17 PM

To: Seabright

Cc: rhokeesq, "Perlmutter, Rebecca (USAHI)", Leihinahina Sullivan

Dear all,

Attached is my Final Competency Report for Defendant Leihinahina Sullivan. Please let me know if you have any questions or concerns.

Thank you all for the opportunity to assist in this matter and I hope our paths cross again in the future.

Kind regards,
Reneau Kennedy

From: Leihinahina Sullivan Thu, Mar 4, 2021 at 3:18 PM

To: Reneau Kennedy

Cc: Seabright, rhokeesq , "Perlmutter, Rebecca (USAHI)"

Dear Dr. Kennedy,

Correct me if I am wrong, but my understanding is that this report was only to be given to Judge Seabright for his review, then the Court would disseminate it out to the parties. I am speechless & pono 'ole ka mana'o, as all of my confidential psychiatric medical records that were given to you in confidence by the Court are in the Appendix.

Sincerely,

Leihinahina Sullivan, Pro Se Defendant

EXHIBIT B

KENJI M. PRICE #10523
United States Attorney
District of Hawaii

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR 17 00104-JMS
	)	
Plaintiff,	)	ORDER REGARDING DISCLOSURE
	)	OF DEFENDANT'S PSYCHIATRIC
v.	)	RECORDS IN THE CUSTODY OF
	)	DR. ETHAN PIEN
LEIHINAHINA SULLIVAN,	)	
	)	
Defendant.	)	
	)	

ORDER REGARDING DISCLOSURE OF DEFENDANT'S PSYCHIATRIC RECORDS IN THE CUSTODY OF DR. ETHAN PIEN

As the matter has come before a hearing on January 26, 2021 (ECF No. 1047), and the court's oral findings at that hearing incorporated and adopted herein, the court finds:

Defendant Leihinahina Sullivan's patient records involving mental health treatment with psychiatrist Dr. Ethan Pien contains communications and notes 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).

Over the defendant's objection, the court finds the defendant has waived the 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 the defendant's right of self-representation.

Further, a narrow exception applies wherein the psychotherapist-patient privilege does not preclude the disclosure of those records containing privileged communications and notes for the court's consideration of the defendant's right of self-representation and the court-ordered competency evaluation by an independent examiner on that matter.

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The court **ORDERS** as follows:

(1) Dr. Ethan Pien is directed to provide to the court one (1) copy of any and all patient note(s), treatment(s), and diagnosis(es) records of Leihinahina Sullivan no later than 5:00 p.m. on February 5, 2021 or within one (1) week of the service of this Order, whichever date is later, unless leave for additional time is granted by this court for good cause shown.

(2) Dr. Pien is directed to: a) hand deliver the records to the court by contacting Chief Judge J. Michael Seabright's chambers at (808) 541-1804 to make arrangements for pick up; b) make arrangements with the United States Marshals Service for delivery to the court; or c) email the records to the court's orders inbox at Seabright_Orders@hid.uscourts.gov.

(3) Dr. Pien is directed to produce the records either electronically (email or disc) or in hard copy, but must clearly mark the email or medium as "Confidential Health Records for Chambers of Hon. J. Michael Seabright" and enclose any paper records in a sealed envelope or box.

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The United States Marshals Service is directed to serve this Order on Dr. Ethan Pien.

DATED: January 27, 2021, at Honolulu, Hawaii.

/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

United States v. Leihinahina Sullivan, Cr. No. 17-00104-JMS
"Order Regarding Disclosure of Defendant's Psychiatric Records in the Custody of Dr. Ethan Pien"

Appendix B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LEIHINAHINA SULLIVAN, Plaintiff, vs. RENEAU KENNEDY, Ed.D. CLINICAL & FORENSIC PSYCHOLOGY, et al.; JOHN & JANE DOES 1-100, Defendants.	CIVIL NO. 21-00235 JAO-RT ORDER (1) DISMISSING COMPLAINT AND (2) DENYING IFP APPLICATION AND MOTION TO REQUEST IFP APPLICATION U.S. v. Jaffee

ORDER (1) DISMISSING COMPLAINT AND (2) DENYING IFP APPLICATION AND MOTION TO REQUEST IFP APPLICATION

Before the Court is pro se Plaintiff Leihinahina Sullivan's ("Plaintiff") Application to Proceed In Forma Pauperis ("IFP Application" or "Application"), filed on May 18, 2021.[1] ECF No. 4. For the following reasons, the Court

[1] Plaintiff was not incarcerated at the time she initiated this action and filed her IFP Application, but she has since been detained. Due to her incarceration, Plaintiff filed a Motion to Request Application to Proceed In Forma Pauperis by a Prisoner. ECF No. 7. It is unclear whether she is requesting that the form application be provided to her, or whether she is effectively amending her IFP Application to reflect her change in status. In any case, the Motion is denied because a request for a form application will be moot and the Court is screening her Complaint in connection with her IFP Application. Moreover, insofar as

(continued . . .)

DISMISSES the Complaint and DENIES the IFP Application and Motion to Request Application to Proceed In Forma Pauperis by a Prisoner.

BACKGROUND

This action arises out of the disclosure of Plaintiff's psychological records to Assistant U.S. Attorney Rebecca Perlmutter ("AUSA Perlmutter") in connection with Plaintiff's competency examination in Criminal No. 17-00104 JMS-KJM, *United States v. Sullivan*. ECF No. 1 (Compl.) ¶ 1. In *United States v. Sullivan*, Chief Judge J. Michael Seabright appointed Defendant Dr. Reneau Kennedy ("Defendant") as the examining psychologist to conduct Plaintiff's competency examination.[2] Crim. No. 17-00104 JMS-KJM, ECF No. 1018. Defendant obtained Plaintiff's psychological records from Dr. Ethan Pien, Plaintiff's treating psychiatrist, which Defendant then transcribed into the Final Competency Report ("Report"). Compl. ¶¶ 2, 9. According to Plaintiff, Defendant's transcription of her records into the Report and subsequent transmission of the Report via email to multiple recipients, including AUSA Perlmutter, violated Plaintiff's Fourth

(. . . continued)
Plaintiff was not a prisoner when she filed this lawsuit, the Court does not treat her as one for IFP purposes. *See* 28 U.S.C. § 1915(b)(1) ("[I]f a prisoner brings a civil action . . . in forma pauperis, the prisoner *shall* be required to pay the full amount of a filing fee." (emphasis added)).

[2] Plaintiff describes Defendant as a contractor for Chief Judge Seabright. Compl. ¶ 22.

Amendment, Fourteenth Amendment, and privacy rights. *Id.* ¶ 9. Plaintiff asserts a single count in her Complaint: violation of her privacy by disclosing confidential medial records to AUSA Perlmutter over Plaintiff's objection. *Id.* at 6. Plaintiff requests damages and attorneys' fees and costs. *Id.* at 7.

DISCUSSION

A. Dismissal of the Complaint under the In Forma Pauperis Statute — 28 U.S.C. § 1915(e)(2)

Plaintiff seeks leave to proceed in forma pauperis. A court may deny leave to proceed in forma pauperis at the outset and shall dismiss the complaint if it appears from the face of the proposed complaint that the action: "([1]) is frivolous or malicious; ([2]) fails to state a claim on which relief may be granted; or ([3]) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2); *see Tripati v. First Nat'l Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987); *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998). When evaluating whether a complaint fails to state a viable claim for screening purposes, the Court applies Federal Rule of Civil Procedure ("FRCP") 8's pleading standard as it does in the context of an FRCP 12(b)(6) motion to dismiss. *See Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012).

FRCP 8(a) requires "a short and plain statement of the grounds for the court's jurisdiction" and "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1)–(2). Although the Federal

Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. *See Jones v. Cmty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). "The Federal Rules require that averments 'be simple, concise and direct.'" *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). FRCP 8 does not demand detailed factual allegations. However, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citation omitted) "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (citations omitted). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678 (citation omitted).

In the present case, even construing Plaintiff's Complaint liberally as it must, *see Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), the Court finds that dismissal is appropriate because Defendant is immune from monetary relief.

Plaintiff alleges that Defendant, a private individual she identifies as a contractor of Chief Judge Seabright, violated her constitutional rights. To the

extent Plaintiff treats Defendant as a federal actor, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is implicated. "In *Bivens*, the Supreme Court 'recognized for the first time an implied right of action for damages against federal officers alleged to have violated a citizen's constitutional rights.'" *Vega v. United States*, 881 F.3d 1146, 1152 (9th Cir. 2018) (citation omitted). *Bivens* is "a 'more limited' 'federal analog' to [42 U.S.C.] § 1983." *Hernandez v. Mesa*, 589 U.S. __, 140 S. Ct. 735, 747 (2020) (citation omitted). "[A]ctions under § 1983 and those under *Bivens* are identical save for the replacement of a state actor under § 1983 by a federal actor under *Bivens*." *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (internal quotation marks and citation omitted).

Courts are tasked with determining whether to recognize a *Bivens* claim,[3] but the Court need not engage in this analysis because the Complaint is subject to

[3] *Bivens* involved federal agents who violated the Fourth Amendment's prohibition against unreasonable searches and seizures. *See Bivens*, 403 U.S. at 389–90. The Supreme Court has expanded this implied cause of action on only two occasions since. *See Davis v. Passman*, 442 U.S. 228 (1979) (providing a damages remedy under the Fifth Amendment's Due Process Clause in a suit for gender discrimination assistant against a Congressman); *Carlson v. Green*, 446 U.S. 14 (1980) (providing a damages remedy under the Eighth Amendment's Cruel and Unusual Punishment Clause for federal prison officials' failure to provide adequate medical treatment). "These three cases—*Bivens, Davis*, and *Carlson*—represent the only instances in which the Court has approved of an implied damages remedy under the Constitution itself." *Ziglar v. Abbasi*, 582 U.S. , 137 S. Ct. 1843, 1855 (2017). "[E]xpanding the *Bivens* remedy is now a 'disfavored' (continued . . .)

(. . . continued)
judicial activity." *Id.* at , 137 S. Ct. at 1857 (citation omitted). This comports with the Supreme Court's consistent refusal "to extend *Bivens* to any new context or new category of defendants." *Id.* (internal quotation marks and citation omitted).

The Supreme Court has articulated a two-step test for determining when courts should recognize a *Bivens* claim. First, the court asks, "whether a case presents a new *Bivens* context." *Id.* at __, 137 S. Ct. at 1859. "If the case is different in a meaningful way from previous *Bivens* cases decided by th[e Supreme] Court, then the context is new." *Id.* The following non-exhaustive list of differences may be "meaningful enough to make a given context a new one":

> the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous *Bivens* cases did not consider.

Id. at , 137 S. Ct. at 1859–60. If the answer is "no," further analysis is unnecessary. *See Lanuza v. Love*, 899 F.3d 1019, 1023 (9th Cir. 2018).

If the answer is "yes," the court moves to step two, under which it may only extend *Bivens* in a new context if two conditions are satisfied. *See Ioane v. Hodges*, 939 F.3d 945, 951 (9th Cir. 2018). "First, 'the plaintiff must not have any other adequate alternative remedy.'" *Id.* (citation omitted). Second, there can be no "'special factors' counselling hesitation in the absence of affirmative action by Congress." *Abbasi*, 582 U.S. at __, 137 S. Ct. at 1857 (some internal quotation marks and citations omitted). This inquiry focuses on "whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed." *Id.* at , 137 S. Ct. at 1857–58. A "special factor counselling hesitation" is therefore one that causes "a court to hesitate before answering that question in the affirmative." *Id.* at , 137 S. Ct. at 1858.

dismissal. This is so even assuming Defendant engaged in federal action, *see Schowengerdt v. Gen. Dynamics Corp.*, 823 F.2d 1328, 1337–38 (9th Cir. 1987) (A defendant's private status "will not serve to defeat a *Bivens* claim, provided that the defendant engaged in federal action."); *see also Vega*, 881 F.3d at 1153, because Defendant is entitled to immunity.

"Under the doctrine of quasi-judicial immunity, absolute judicial immunity may be 'extended to certain others who perform functions closely associated with the judicial process.'" *Bridge Aina Le'a, LLC v. Haw. Land Use Comm'n*, 125 F. Supp. 3d 1051, 1074 (D. Haw. 2015) (quoting *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001)), *aff'd*, 950 F.3d 610 (9th Cir. 2020). Here, Defendant was appointed by Chief Judge Seabright to conduct a competency examination of Plaintiff in her criminal case. The allegations against Defendant occurred in connection with Defendant's appointment and preparation and transmission of the Report. Court-appointed psychologists and psychiatrists who perform court-ordered evaluations enjoy quasi-judicial immunity. *See Doe v. Arizona*, 240 F. App'x 241 (9th Cir. 2007) (affirming dismissal of the claims against a doctor who performed court-ordered evaluations because he was entitled to quasi-judicial immunity (citing *Burkes v. Callion*, 433 F.2d 318, 319 (9th Cir. 1970) (per curiam))); *Xoss v. County of Los Angeles*, CV 12-1400 PSG (RZx), 2013 WL 11324011, at *2 (C.D. Cal. May 22, 2013) ("The Ninth Circuit has held

that a court-appointed psychiatrist has quasi-judicial immunity from damages liability for acts committed 'in the performance of an integral part of the judicial process,' such as preparing and submitting medical reports[.]" (citations omitted)); *cf. Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1390 (9th Cir. 1987) (in the *Bivens* context, applying absolute quasi-judicial immunity from damages for civil rights violations to court clerks "when they perform tasks that are an integral part of the judicial process" (citations omitted)).

Where, as here, the Court finds that quasi-judicial immunity applies, § 1915(e)(2)(B)(iii) mandates dismissal. *See Chavez v. Robinson*, 817 F.3d 1162, 1167 (9th Cir. 2016); *Stribling v. Matherly*, No. 2:18-cv-01086 CKD P, 2018 WL 6042782, at *2 (E.D. Cal. Nov. 19, 2018) ("[P]laintiff's complaint must be dismissed because it 'seeks monetary relief from a defendant who is immune from such relief.'" (quoting 28 U.S.C. § 1915A(b)(2)). Accordingly, the Complaint is DISMISSED. 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 the allegation of other facts. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *see also Tripati*, 821 F.2d at 1370. Because absolute and qualified immunity provide "immunity from suit rather than a mere defense to liability," *Chavez*, 817 F.3d at 1168 (internal quotation marks and citation omitted), amendment would be futile. The dismissal is therefore without

leave to amend. In light of the dismissal, the Court DENIES Plaintiff's IFP Application and Motion to Request IFP Application.

CONCLUSION

Based on the foregoing, Plaintiff's Complaint is DISMISSED and her IFP Application and Motion to Request IFP Application are DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, June 10, 2021.

Jill A. Otake
United States District Judge

Appendix C

ORIGINAL

Leihinahina Sullivan, Pro Se Plaintiff
C/o FDC Inmate # 09779122
PO Box 30080
Honolulu, Hawaii

In The United States District Court
For The District of Hawaii

Leihinahina Sullivan,
~~Plaintiff~~,
Pro Se,

vs

Reneau Kennedy, Ed.D. Clinical & Forensic Psychology, et. al.; John & Jane DOES 1-100,
Defendants.

Civil No. 21-00235-JAO-RT

~~Motion~~ For Reconsideration of ECF No. 8, Order (1) Dismissing Complaint and (2) Denying IFP Application and Motion To Request IFP Application; Exhibit A.

Motion for Reconsideration ECF No. 8, Order (1) Dismissing Complaint and (2) Denying IFP Application and Motion To Request IFP Application As the Court Made A ~~Manifest Error of Law or Fact Therein In~~ ECF No. 8 Order ("Motion")

I am filing this Motion, and will try my best to address the substance of the Order (ECF No. 8) and effort to demonstrate that the Court made a manifest error of law or fact therein, Nat'l Union Fire Ins. Co. of Pittsburg, Pa v. Am. Eurocopter Corp., No. 09-00136 DAE-LEK, 2009 WL 3424969, at *3 (D. Haw. Oct. 26, 2009) and not a "mere disagreement with a prenous order..." White v. Sabatino, 424 F. Supp. 2d 1271, 1274 (D. Haw. 2006). I am a pro se civilly detained inmate at the Honolulu Federal Detention Center ("FDC"), therefore, Courts must construe liberally the pro se filings from strict application and must afford the pro se the benefit of the doubt. See Karim-Panahi v. L.A. Police Dep't., 839 F. 2d 621, 623 (9th Cir. 1988) the

rule that courts construe liberally pro se litigants filings from strict application of rules, especially in constitutional claim violations & civil rights cases filed by pro se inmates), Pouncil v. Tilton, 704 F.3d 568, 575-76 (9th Cir. 2012) the rule of liberal construction "protects the rights of pro se litigants to self-representation and meaningful access to Courts"). I apologize cause I am given no tools or library hours to work on this pleading, hence use of recycled paper, pencils, and lack of caselaw citations, I will try my best.

I. Facts As It Relates to this Motion (Background)

In criminal case no. 17-00104-JMS-KJM (DHaw), I am a pro se defendant, which started on February 15, 2017 (Id. at ECF No. 1, Indictment) and now on the Fifth Indictment - Fourth Superceding (Id. at ECF No. 495, December 26, 2019. I was incarcerated pretrial at Honolulu Federal Detention Center ("FDC") from July 26, 2019 to June 22, 2020, and granted to represent myself on September 11, 2019. During the period of my pretrial incarceration at FDC, I filed Motions that I could not prepare for trial, discovery issues, speedy trial, etc. in that Case (Id). On June 16, 2020 (Id. at ECF No. 936) my Motion for Release so I could prepare for trial was granted; I objected to Governments Motion to continue trial (ECF No. 924) as all the delays was caused by Government; in addition, how upset I was that Government (AUSA) had obtained 177-pages of my medical records from Bureau of Prisons without my consent = nothing (See Civ. No. 1:20-cv-00269-LEK-KJM [D. Haw] for more information/details). On June 22, 2020 (ECF No. 950, 951) hearings (HRSA CR. Case 17-00104-JMS-KJM at where I was released, Judge Seabright asked if there was anything else so I brought up the 177-pages medical records as it had all of my private medical/psychological records, so we had a back and forth. He took a recess and ordered both me and AUSA to file simultaneous briefs on (1) whether we see any issues or concerns regarding my ability to represent myself during trial; and (2) whether Judge Seabright should take any action (See Id. at ECF Nos. 960 & 965, Briefs filed by me and AUSA, respectively). On July 8, 2020, Id. at ECF No. 970 EO, Judge Seabright agreed with our briefing and did not revoke my pro se status. Then on September 21, 2020, Id. at ECF No. 1001, in the sealed portion of the hearing, Stand by Counsel Mr. Richard Hoke revealed information to Judge Seabright that I told him in confidence (attorney-client privilege) which had to do with my defense (See Id. at ECF No 1159 Page ID No. 12125-12131) transcript from Jan. 15, 2021, and transcript of hearing September 21, 2020 / Id. at ECF No. 1056.

On September 21, 2020 (Id. at ECF No. 1002) Standby Counsel Mr. Richard Hoke filed Notice of Intent without my consent or approval. Then on September 22, 2020 (Id. at ECF No. 1003) I filed myself, because of what Standby Counsel did, and signed, a Withdrawal of that Notice of Intent Id. at ECF No. 1002 that Mr. Hoke filed without my permission. (See Id. at ECF No 1153 Transcript Hearing of January 15, 2021 where Mr. Hoke admitted he filed ECF No. 1003 on his own without my consent). Then on September 28, 2020, Id. at ECF No. 1008, Judge Seabright ordered Sua Sponte that I go through a competency examination (See Id. at ECF No. 1018 EO Order by Judge Seabright). I had objected to the Competency Exam at September 28, 2020 hearing, on the record. Id. at ECF No. 1018 EO Order Dr. Kennedy was to do my competency evaluation. Sometime after the EO Order Id., Dr. Kennedy via Mr. Hoke asked if she could get my informed consent to access my medical/psychiatric records, which Mr. Hoke forwarded to me, I said No. She asked me again when she interviewed me in December 2020, ending Nov./ I said No again. (I apologize cause I have no access to email account [gmail] while here at FDC so cannot provide a copy of that). Then on December 15, 2020, Id. at ECF No. 1032, a status conference with Judge Seabright regarding Dr. Kennedy's competency report was held. Judge Seabright found that I was competent to stand trial but as to my ability to represent myself under Indiana v. Edwards, wanted briefing on our positions (me & Government) by December 31, 2020, a hearing to be set mid-January 2021. I filed Id. at ECF No. 1034 & Government filed Id. at ECF No. 1036, in response to Judge Seabright's request. Then on January 15, 2021 Id. at ECF No. 1038 a status conference was held, in the sealed portion, once again Standby Counsel Mr. Richard Hoke, again shared attorney client privilege information, that I told him in confidence with Judge Seabright, that upset me again (See Id. at ECF No. 1153 Transcript hearing of January 15, 2021 & Id. at ECF No 1040 Unsealed portion of transcript hearing of January 15, 2021). At that hearing Judge Seabright ordered simultaneous briefing from me and Government as to whether or not, over my objections, a Court can order sua sponte, access to my protected confidential medical/psychiatric records (communications) between me and my psychiatrist without my voluntary consent. In response to Judge Seabright's order I filed Id. at ECF No. 1042 on January 21, 2021 (3)

"that a Judge Vested by Statute to Subpoena a Criminal Defendant's Psychiatric Records, cannot over a Defendant's Express Objections in a Sua Sponte Competency Hearing When The Defendant Did Not Waive Her Privilege to Her Psychotherapist - Patient Relationship" and Government filed Id. at ECF No. 1043 "Regarding Competency Evaluation and Court Ordered Psychiatric Records" on the same day. On January 25, 2021, I filed Id. at ECF No. 1046, which was my declaration, again objecting to the Court wanting to subpoena my medical/psychiatric records. In both the Government's and my briefing, Id. at ECF Nos. 1043 & 1042, we both cited to United States Supreme Court Case, Jaffee v. Redmond, 518 U.S. 1 (1996) where my U.S. Constitutional ~~fundamental~~ substantial due process to my individual 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 U.S. 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 U.S. Supreme Court in Jaffee, flatly rejected the suggestion that the privilege was subject to balancing. 518 U.S. at 17, 116 S.Ct. at 1932. In Id. at ECF No. 1042 I stated.

"If the Court orders disclosure of records over Sullivan's objections, then Sullivan request that only the Court review the records 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. 1042 PageID #10669.

On January 26, 2021 a hearing regarding my competency evaluation was held, Id. at ECF No. 1047, and Court issued a written order directing Dr. Ethan Pien to release my medical records to the Court. "With no objections, the Court sets the following protections:

(1) Court will do an in camera review of records and make redactions, if any are necessary, before transmitting the records to Dr. Kennedy; and

(2) Dr. Kennedy to submit her supplemental report to the Court first. Court will review and make redactions; if any are necessary, before the

Supplemental report is provided to the Government. Id. at ECF No. 1047. On January 27, 2021, Id. at ECF No. 1048, Judge Seabright signed the order regarding disclosure of my psychiatric records in the custody of Dr. Ethan Pien, MD Psychiatrist. On February 2, 2021, Id. at ECF No. 1052, Dr. Ethan Pien, M.D. Psychiatrist delivered to Seabright_Orders inbox the medical records; the Court took special measures to those records before transmitting those records to Dr. Reneau Kennedy electronically on February 4, 2021 (See Id. at ECF No. 1052). On February 11, 2021, Id. at ECF No. 1054, a status conference was held which Dr. Kennedy attended and affirmed instructions to Dr. Kennedy by Judge Seabright (See transcript hearing of February 11, 2021, Id. at ECF No. 1083). "Upon ~~completing~~ receiving & reviewing the transcript, Dr. Kennedy will submit an amended report * to the Court. Court will review and make redactions, if any are necessary. Defendant will be provided a copy of the amended report." Id. at ECF No. 1054. Judge Seabright, said after I review the report make any other redactions. as I see necessary, he would review again and then provide a copy of the final report to AUSA. See Id at ECF No. 1083. That same day on February 11, 2021, I was provided a copy of Dr. Pien's medical records by Judge Seabright (Id. at ECF No. 1054).

* A. Dr. Kennedy's Failure to Follow Court Orders (Id. at ECF Nos. 1047 [January 26, 2021]; Id. at ECF No. 1052 [February 4, 2021]; Id. at ECF No. 1054 [February 11, 2021]; and Federal Laws (HIPAA, Disclosure of Medical Records Violation, Etc.) Was Intentional & in Excess of Her Authority Granted By the Court. So Qualified Immunity Applies not Quasi-Judicial Immunity

On March 4, 2021 at 1:17 pm in an electronic email that was sent to Judge Seabright, Mc, ~~Rod~~ Mr. Hoke, and AUSA Perlmutter by Dr. Kennedy with an attached "Final Sullivan Report. PDF", in violation of Judge Seabright's orders (Id. at ECF Nos. 1047, 1052, & 1054), Dr. Kennedy had transcribed 41 of my confidential medical records (psychiatric) on to that report which was the reason for all the orders, safeguards, briefings, etc.; hence the reason for filing of this lawsuit, Civ. 21-00235-JAO-RT [D. Haw.]. Dr. Kennedy did not follow court orders and the Law (HIPAA, Privacy Laws Re Medical Records; No Informed Consent), therefore, quasi-Immunity cannot apply to her and she must be held liable for what she did intentionally & in excess of her authority. (See Id. at ECF No. 1067 an email

from me to Judge Seabright on how it affected me, my defense, everything).

* II. Dr. Kennedy Cannot Enjoy Quasi-Judicial Immunity Because She Failed to Follow Court Orders (Id. at ECF Nos. 1047; 1052; 1054) & Broke Federal & State Laws (HIPAA, Privacy Laws, Privileges, etc) and Cannot Be Immuned From Suit When The Report Is Evidence and a Product of Her Crime (Intentional, malicious, access of authority) See Jaffee; Buckley v. Fitzsimmons, 509 U.S. 259, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993); Fletcher v. Kalina, 93 F. 3d 653, 655 (9th Cir. 1996)

The United States Supreme Court has held that absolute immunity cannot apply to court personnel, or others who performs functions closely associated with the judicial process (looking at the nature of the function performed not the actor who performed it) when that actors (in this case Dr. Kennedy) conduct falls outside the nature of the function performed. Buckley v. Fitzsimmons, 509 U.S. 259, 125 L.Ed. 2d 209, 113 S. Ct. 2606 (1993), See also Fletcher v. Kalina, 93 F. 3d 653, 655 (9th Cir. 1996). In [redacted] Buckley a prosecutor was held not to have Absolute Judicial Immunity but rather qualified immunity when not following the law and going outside of the parameters of their duty, therefore, the Supreme Court denied absolute immunity. See also Malley v. Briggs, 475 U.S. 335, 342-43; 89 L. Ed 2d 271, 106 S. Ct. 1092 (1986) (Holding that a police officer who secures an arrest warrant without probable cause cannot assert absolute immunity). If Dr. Kennedy stayed within the parameters of the Court Orders and Federal & State Laws (HIPAA, Privacy Laws for Licenced Healthcare Professionals) she would have Quasi-Judicial Immunity, BUT SHE DID NOT as discussed in this pleading. So all those case laws this Court cited to is distinguishable, DOE v. Arizona, 240 F. App'x. 241 (9th Cir. 2007); Burkes v. Callion, 433 F. 2d 318, 318 (9th Cir. 1970) (per curiam); Xoss v. County of Los Angeles, CV 12-1400 PSG (RZx), 2013 WL 11324011, at *2 (C.D. Cal. May 22, 2013) they followed court orders and the law so they get quasi-judicial immunity, Dr. Kennedy, respectfully, does not as her acts were intentional, malicious, or in excess of authority. Brady v. Fisher, 80 U.S. (13 Wall) 335, 351 [1872]).

III. Conclusion

I respectfully request that ECF No. 8 Order be reconsidered and my complaint not be dismissed, that I be allowed to amend my complaint, and grant my motion to request IFP Application, as a matter of law.

/s/ [signature] Dated: 6/17/2021

Honolulu, Hawaii

Exhibit A

ECF No. 1067

CR No. 17-00104-JMS-KJM

Leihinahina Sullivan, Pro Se Defendant
c/o YWCA Fernhurst
1566 Wilder Avenue #312
Honolulu, Hawaii 96822

March 14, 2021

Honorable Chief Administrative Judge J. Michael Seabright
United States Federal District Court for the District of Hawaii
Prince Jonah Kuhio Kalanianaole Federal Building and Court House
300 Ala Moana Blvd., Rm C338
Honolulu, Hawaii 96850

Re: Status Conference Hearing of March 16, 2021 @ 9:00 a.m.

Dear Honorable Chief Administrative Judge J. Michael Seabright,

Hope all is well with you. I write this to address the matter of my confidential medical records being released to AUSA on March 4, 2021 which has weighed heavy on me since that day. The medical records released about me was private and was not meant to be viewed by anyone, and over my objections, was subpoenaed in order to determine whether or not to revoke my pro se status. This Honorable Court took extraordinary measures to insure that those records would be safe guarded and in one email from Dr. Kennedy, that put the defining nail into my ka'ai (casket).

My life is now an open book to AUSA who has made my life difficult for over five years, since the first search of my home on June 1, 2016, which began the saga of the Kamehameha IV Housing girl that pulled her way out of the projects, surrounded by drugs, grief, suicide, illness, sadness, hope, faith, tolerance, and a belief that the United States of America offered opportunity and Justice for all even for those that are marginalized. Pretrial incarcerated at the Federal Detention in an unprecedented COVID pandemic, beaten by another inmate, taken to the SHU not once but twice, and then released to a halfway house with women coming out of prison for drugs and some relapsing, a cogent reminder that, "eh housing girl, we are still here and don't you forget it", but through it all I continued to "maka'ala" and believe that there is Justice for all even for me, and worked hard on my case everyday (even if I had go into the dumpster at FDC to get rubbish paper to write my pleadings, even if I had to write motion after motion to get the tools that I needed, if that is what I had to do, I did it), this is who I am.

I always believed that if you work hard, good things would come, even when life seemed so dismal and those around me chose to drown their sorrows and mental illness in drugs. I've seen the worst, unspeakable result of those choices and told myself at a very young age that I would make it out, just "maka'ala" (like my tutu [paternal Hawaiian Grandmother] used to tell me before she passed in Mayor Wright Housing Project), which the "kauna" or hidden meaning is to steadfast as the Lord has you. All of my grandparent's died before they could see that I made it

out, but I suffered greatly through the years as I never stopped working hard, and it continued throughout my lifetime to where my mental health was compromised and it became it problem (manic, depression, never stopping), and like others that have traveled a similar path from the housing, it was a stigma to go get help cause, "Eh, you know if you go see the doctor, you know you 'pupule' (crazy) / 'lolo' (retarded)'", so don't. It wasn't until I got older that I sought the help I needed, but was in denial through most of it until 2016 where I was forced to deal with it, and it hit me like a pohaku (rock).

Since the search of my home in June 1, 2016, I became obsessed with getting my discovery, staying up all hours working on my case with then William Harrison, who I knew as a child as his ex-wife, Erica Pang went to John A. Burns Medical School with my mom, then again he came into my life when he began his relationship with Raiatea Helm who is God sister to my son, Kapono Sullivan. I never got discovery and my symptoms worsen when the agent assigned to the case began appearing stalking out my home, family, friends, and getting information about me which I did not know how he was doing it for years after the search of my home in June 1, 2016, but had my suspicions which all came to light recently on how he did it (using my iPhone he took from me and my husband), and the reason for me filing ECF Nos. 1058, 1060, 1065, & 1066. If I had the discovery I have now, back in 2017, I would have asked for a Motion to Compel production and inspection of my phones taken as if you look at the indictments through the years, every charge I worked on through the years without discovery, was taken out and replaced by another charge and another alleged victim, somehow the IRS Agent knew my every move, my defense, my work in progress.

Even through all of this I believe that Justice will prevail, and hence the reason I feel so strongly about my pro se status. All I wanted was a fair trial in a fair tribunal and in order to do that all I asked for since the beginning was my **discovery**, instead I was met by an adversarial AUSA who made excuses, after excuses, on giving me discovery: oh it's Jenkes; oh it's not ripe; oh I don't know anything about it; Sullivan is lying she can see her discovery; Oh, we can't give her discovery because we need a protective order which by the way AUSA is asking that Sullivan be responsible for all redactions before she reads the discovery which is unrealistic, but hey who cares we need the time to keep investigating Sullivan cause we were wrong about her from the beginning and we have to find stuff on her (five indictments, numerous bail revocation hearings, warrants upon warrants; piece meal discovery through the years); Sullivan ~~is crazy, we~~ are not spying on her while at FDC; oh but we did get recordings of her conversations at FDC, oh but we never listened to it ; Sullivan is overreacting and should thank IRS Agent MacPherson for visiting her in the SHU and bringing her paperwork, instead Sullivan was rude and swore at him Sullivan, how bad of Sullivan; then in November 2019, no Sullivan should not have possession of her iPhones taken on June 1, 2016, and then over a month later, oh by the way we lost Sullivan's iPhones and then when Sullivan ask to inspect the iPhones lost then found, Oh no we need it for the case so "No"; Oh Mr. Hoke, we feel sorry for you have to work with Sullivan, poor thing, and we here at AUSA know it's you that are writing her motions and stuff, it's you Mr. Hoke is behind everything; after the last status hearing ECF No. 1054 (February 11, 2021) Ms. Perlmutter told Mr. Hoke that this whole issue on my psychological report is Sullivan and Judge Seabright's problem not hers; kamea kamea (etc., etc.). When the truth is all I ever

wanted was my discovery so I could prepare for trial, so in effect this does involve AUSA as they let this matter go on for years which compromised Sullivan's mental health. I don't know if Ms. Perlmutter knew what was going on with my discovery for all these years, but I would like to believe that she knew nothing and was relying solely on the representations made by IRS Agent MacPherson, I believe she is a good person and had no idea what was going on.

Today, I still believe that Justice will prevail, even thru all of this, knowing the truth has set me free to speak up on how my story should end. The Bible talks about "authority" and as such this Court has the authority to make sure that I have a fair trial, those rules have been carelessly disregarded and my case has been irreversibly compromised by officers of the court that breached their duties and changed my life forever. When I finally got my discovery from the forensic expert and began going through it, I saw first-hand how my mental health caused me to work manically and I could not believe all of work that I had done through the years of not seeking help, I suffer from a mental health ailment, so I go through my manic phases and my depression. My depression exacerbated by my upbringing, which every day I felt guilty for making out of housing because others did not (I had to learn to love myself & my family and to accept it, which I still work through every day of my life), hence the reason I never stopped trying to help others which is part of my illness and learning to say "no, I can't help you." It is the reality I live with every day of my life, a trauma when as a young child, finding my then sixteen years old Aunty Belinda Gonsalves hanging from a tree with a water hose she borrowed from the neighbor, at ditch 3 behind Kamehameha IV Housing Project, I jumped into the ditch to try to hold her up so she could breath but I was too little and did not have the strength, the reason for me trying to help everyone and always putting myself last. I live with this everyday but now have accepted that she needed help, like I have done for myself.

I have no fear of discovery, as my life mo'olelo (story) has been told. The only fear I have is that this does not ever happen to anyone else, so I ask that Justice prevails in this case and right the wrong, and not allow evidence to be used against me that was gotten by officers of the court illegally or by means of wrong doing. If you chose to take my pro se away from me, I will respect that because I believe like I did when I was kid growing up in the Housing Project, that there is ***Justice for All, no matter where you come from***.

O wau iho no a me ka ha`aha'a.

(Sincerely)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LEIHINAHINA SULLIVAN, Plaintiff, vs. RENEAU KENNEDY, Ed.D. CLINICAL & FORENSIC PSYCHOLOGY, et al.; JOHN & JANE DOES 1-100, Defendants.	CIVIL NO. 21-00235 JAO-RT ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER (1) DISMISSING COMPLAINT AND (2) DENYING IFP APPLICATION AND MOTION TO REQUEST IFP APPLICATION

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER (1) DISMISSING COMPLAINT AND (2) DENYING IFP APPLICATION AND MOTION TO REQUEST IFP APPLICATION

On June 10, 2021, the Court issued an Order (1) Dismissing Complaint and (2) Denying IFP Application and Motion to Request IFP Application ("Order"). ECF No. 8. Judgment entered the same day. ECF No. 9. Pro se Plaintiff Leihinahina Sullivan ("Plaintiff") now seeks reconsideration of the Order. The Court shall decide the matter without a hearing pursuant to Local Rule 7.1(d). For the following reasons, the Court DENIES Plaintiff's Motion for Reconsideration. ECF No. 11.

Exhibit B

Dkt # 13

BACKGROUND

This action arises out of the disclosure of Plaintiff's psychological records to Assistant U.S. Attorney Rebecca Perlmutter ("AUSA Perlmutter") in connection with Plaintiff's competency examination in Criminal No. 17-00104 JMS-KJM, *United States v. Sullivan*. ECF No. 1 (Compl.) ¶ 1. In *United States v. Sullivan*, Chief Judge J. Michael Seabright appointed Defendant Dr. Reneau Kennedy ("Defendant") as the examining psychologist to conduct Plaintiff's competency examination.[1] Crim. No. 17-00104 JMS-KJM, ECF No. 1018. Defendant obtained Plaintiff's psychological records from Dr. Ethan Pien, Plaintiff's treating psychiatrist, which Defendant then transcribed into the Final Competency Report ("Report"). Compl. ¶¶ 2, 9. According to Plaintiff, Defendant's transcription of her records into the Report and subsequent transmission of the Report via email to multiple recipients, including AUSA Perlmutter, violated Plaintiff's Fourth Amendment, Fourteenth Amendment, and privacy rights. *Id.* ¶ 9. Plaintiff asserts a single count in her Complaint: violation of her privacy by disclosing confidential medial records to AUSA Perlmutter over Plaintiff's objection. *Id.* at 6. Plaintiff requests damages and attorneys' fees and costs. *Id.* at 7.

[1] Plaintiff describes Defendant as a contractor for Chief Judge Seabright. Compl. ¶ 22.

The Court dismissed the Complaint without leave to amend pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii) on the basis that Defendant was entitled to quasi-judicial immunity given that the allegations against her related to her appointment and preparation and transmission of the Report. ECF No. 8 at 7–8.

DISCUSSION

Plaintiff argues that the Court committed manifest error or law or fact, thereby entitling her to reconsideration. Although Plaintiff has not cited any rules, Federal Rule of Civil Procedure ("FRCP" or "Rule") 60(b)(6), which provides relief from final judgments, orders, or proceedings for any reason justifying relief, is applicable. Rule 60(b) reconsideration is generally appropriate in three instances: (1) when there has been an intervening change of controlling law; (2) new evidence has come to light; or (3) when necessary to correct a clear error or prevent manifest injustice. *See Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993); *Sierra Club, Haw. Chapter v. City & County of Honolulu*, 486 F. Supp. 2d 1185, 1188 (D. Haw. 2007) ("The Ninth Circuit has recognized that Rule 60(b) may be used to reconsider legal issues and to reconsider the court's own mistake or inadvertence."). "[A] movant seeking relief under Rule 60(b)(6) must show 'extraordinary circumstances' justifying the reopening of a final judgment." *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 443–44 (9th Cir. 2019) (some internal quotation marks and citations omitted).

The Ninth Circuit requires that a successful motion for reconsideration accomplish two goals. "First, a motion for reconsideration must demonstrate some reason why the Court should reconsider its prior decision. Second, the motion must set forth facts or law of a 'strongly convincing' nature to induce the court to reverse its prior decision." *Jacob v. United States*, 128 F. Supp. 2d 638, 641 (D. Haw. 2000) (citing *Decker Coal Co. v. Hartman*, 706 F. Supp. 745, 750 (D. Mont. 1988)) (citation omitted). Mere disagreement with a court's analysis in a previous order is not a sufficient basis for reconsideration. *See White v. Sabatino*, 424 F. Supp. 2d 1271, 1274 (D. Haw. 2006) (citing *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572 (D. Haw. 1988)); *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F. Supp. 2d 1253, 1269 (D. Haw. 2005). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

Here, there are no extraordinary circumstances justifying the reopening of judgment. Plaintiff has not demonstrated that she is entitled to reconsideration, nor has she set forth facts or law of strongly convincing nature to compel reversal of the Order. The Motion contains a lengthy recitation of the procedural history in Plaintiff's criminal case, which Plaintiff cites as evidence that Defendant

intentionally violated court orders and exceeded the scope of her authority. According to Plaintiff, Defendant is not entitled to quasi-judicial immunity because her conduct fell outside the parameters of her duty.

A review of the criminal docket[2] reveals that Defendant's purported violations of Chief Judge Seabright's Orders never occurred. In fact, Plaintiff has repeatedly sought leave[3] to file motions regarding Defendant's alleged misconduct. Crim. No. 17-00104 JMS-KJM, ECF Nos. 1108, 1149. Chief Judge Seabright has found Plaintiff's arguments so lacking in merit or inappropriate that he denied her requests. *Id.*, ECF No. 1112 ("Defendant continues to violate court rules by filing frivolous motions raising arguments previously addressed by the court. Further, even as alleged (and as previously stated in the court's prior order), such conduct would not warrant dismissal of the indictment. (citations omitted)); ECF No. 1151 at 2 ("But, as has been true many times before, Defendant raises nothing new and continues to relitigate issues previously considered by the court."). Because there is no indication that Defendant exceeded the scope of her appointment or violated court orders, even construing the Complaint liberally, the Court did not err in dismissing the Complaint based on Defendant's entitlement to quasi-judicial

[2] The Court also reviewed the docket before dismissing the Complaint.

[3] Plaintiff is prohibited from filing motions (with the exception of motions in limine) without first obtaining leave of court in her criminal case because the motions deadline passed. Crim. No. 17-00104 JMS-KJM, ECF No. 393.

immunity. Plaintiff clearly disagrees with the Order, but mere disagreement does not warrant reconsideration.

This is not a forum for Plaintiff to challenge or seek reconsideration of Chief Judge Seabright's rulings in her ongoing criminal case. Indeed, Plaintiff has had ample opportunity to present challenges in those proceedings and she has acted so abusively and vexatiously that Chief Judge Seabright has repeatedly admonished that her continued abuses will result in the imposition of sanctions, including revocation of her pro se status. *Id.*, ECF No. 1151 at 6.

For these reasons, Plaintiff's Motion is DENIED.

CONCLUSION

Based on the foregoing, the Court DENIES Plaintiff's Motion for Reconsideration. ECF No. 11.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, June 23, 2021.

Jill A. Otake
United States District Judge

Exhibit C

Exhibit D

ORIGINAL

Leihinahina Sullivan, Pro Se Plaintiff
C/o Honolulu Federal Detention Center
Inmate # 09779122
PO Box 30080
Honolulu, Hawaii 96820

In The United States District Court
For The District of Hawaii

Civ. Case No. 1:21-cv-00235-JAO-RT

Leihinahina Sullivan,
Pro Se Plaintiff,

v.

Reneau Kennedy, Ed.D, Clinical & Forensic Psychology, et. al.,
Defendants

Interlocutory Appeal to Orders (ECF No. 8 & ECF No. 13 Court Orders) Denying Plaintiffs Motion for Reconsideration of Order (1) Dismissing Complaint and (2) IFP Application and Motion to Request Plaintiffs IFP Application (ECF No. 1 & 11)

Interlocutory Appeal to Orders ECF Nos. 8 & No. 13 Dismissing My Initial Complaint & Motion for Reconsideration (ECF Nos. 1 & 11, Respectively)

On May 18, 2021, I filed an Initial Complaint (ECF No. 1), on June 10, 2021, the Court ordered to Dismiss my Complaint (ECF No. 1) & My request for IFP Application, as I have been pretrial incarcerated at the Honolulu Federal Detention Center ("FDC") since May 20, 2021 (ECF No. 8). Then on June 21, 2021, I filed a Motion to Reconsider Order of ECF No. 8 (ECF No. 11). The Court denied my Motion for Reconsideration ECF No. 11 (ECF No. 13 filed on June 23, 2021). I am filing this timely interlocutory appeal, and I apologize as I am given no tools (hence rubbish paper/pencils to write this Appeal) or library hours to prepare this pleading, so I am unable to cite to the Fed Civ. Procedure for this Appeal. Courts must afford the pro se the benefit of the doubt. See Karim-Danahi v. L.A. Police Dep't, 839 F. 2d 621, 623 (9th Cir. 1988) the rule that Courts construe liberally the pro se litigants filings from strict application of rules, especially in constitutional claims violations & civil rights cases filed by Pro Se

Inmates); Pouncil v. Tilton, 704 F.3d 568, 575-76 (9th Cir. 2012) (rule of liberal Construction "protects the rights of pro se litigants to self-representation and meaningful access to the Courts.") In my Complaint (ECF No. 1) and Motion for Reconsideration (ECF No. 11) I allege that Defendant Violated Federal Laws (HIPAA, Privacy Laws) for disclosing my medical/psychiatric records without my consent and without following the Court Order issued, over my objection, when Defendant transcribed 41 of those medical/psychiatric records on to a report that was transmitted to me, Standby-counsel, and Plaintiff AUSA Perlmutter (electronically) in violation of the Court Order; all in violation of HIPAA, Privacy Laws, and Fourth & Fourteenth Amendment to the United States Constitution for disclosing my medical/psychiatric records without my informed consent and in violation of the Court Order.

The District Court Judge ruled that because Defendant was contracted by the Court ~~Hawaii~~ to complete a competency examination, that quasi-judicial immunity from damages apply, therefore, immuned from civil liability, and dismissed my constitutional claim & Privacy/HIPAA claims. I argued that because the Healthcare provider did not follow the Court Order - to give the report only to the Judge so he could review and redact (those records) and Privacy & HIPAA law violations (no informed consent) that qualified immunity is all that Defendant is entitled to. In addition, medical records and psychiatric records have been heavily litigated where the Supreme Court and Congress has found in caselaw and Statutes Passed [Fnt 1] (respectively) that it is protected and therefore damages can be sought civilly. The subpoena for my medical/psychiatric records was for Judge to access, so it did not protect Defendant only the Court Order which she did not follow. Therefore, I request an interlocutory appeal

/s/

Honolulu, HI dated: June 27, 2021

Fnt 1 See Jaffee v. Redmond, 518 U.S. 1 (1996); U.S. Sup. Ct Case Trammel (sorry can't remember cit); Health Information Portability Protection Act (HIPAA); 1st Amendment Right to U.S. Constitution - Privacy, etc.

Name: Leiminahina Sullivan
Number: 09779122
FDC Honolulu
P.O. Box 30080
Honolulu, HI 96820

HONOLULU HI 967
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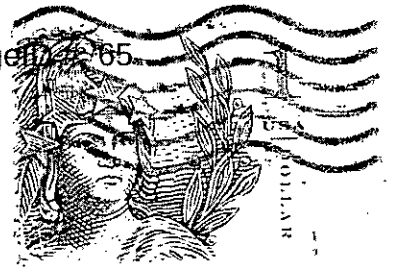


RECEIVED
CLERK, U.S. DISTRICT COURT
JUN 30 2021
DISTRICT OF HAWAII

Attn: Clerk
U.S. District Court
300 Ala Moana Blvd. C-338
Honolulu, HI -96850-

96850-498799

Exhibit E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 06 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEIHINAHINA SULLIVAN, AKA Jen, AKA Jennifer, AKA Jennifer Sullivan, AKA Lei Sullivan,

Plaintiff - Appellant,

v.

RENEAU KENNEDY, Ed.D., Clinical & Forensic Psychology, et al.; JOHN & JANE DOES,

Defendants - Appellees.

No. 21-16123

D.C. No. 1:21-cv-00235-JAO-RT
U.S. District Court for Hawaii, Honolulu

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Mon., August 30, 2021 Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Jessica Poblete Dela Cruz
Deputy Clerk
Ninth Circuit Rule 27-7

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

July 06, 2021

No.:	21-16123
D.C. No.:	1:21-cv-00235-JAO-RT
Short Title:	Leihinahina Sullivan v. Reneau Kennedy, et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Payment of the $505 docketing and filing fees is past due. Failure to correct this deficiency may result in the dismissal of this case for failure to prosecute. See 9th Cir. R. 42-1. The fee is payable to the District Court.

Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

ATTENTION ALL PARTIES AND COUNSEL
PLEASE REVIEW PARTIES AND COUNSEL LISTING

We have opened this appeal/petition based on the information provided to us by the appellant/petitioner and/or the lower court or agency. EVERY attorney and unrepresented litigant receiving this notice MUST immediately review the caption and service list for this case and notify the Court of any corrections.

Failure to ensure that all parties and counsel are accurately listed on our docket, and that counsel are registered and admitted, may result in your inability to participate in and/or receive notice of filings in this case, and may also result in the waiver of claims or defenses.

PARTY LISTING:
Notify the Clerk immediately if you (as an unrepresented litigant) or your client(s) are not properly and accurately listed or identified as a party to the appeal/petition. To report an inaccurate identification of a party (including company names, substitution of government officials appearing only in their official capacity, or spelling errors), or to request that a party who is listed only by their lower court role (such as plaintiff/defendant/movant) be listed as a party to the appeal/petition as an appellee or respondent so that the party can appear in this Court and submit filings, contact the Help Desk at http://www.ca9.uscourts.gov/cmecf/feedback/ or send a letter to the Clerk. If you or your client were identified as a party to the appeal/petition in the notice of appeal/petition for review or representation statement and you believe this is in error, file a motion to dismiss as to those parties.

COUNSEL LISTING:
In addition to reviewing the caption with respect to your client(s) as discussed above, all counsel receiving this notice must also review the electronic notice of docket activity or the service list for the case to ensure that the correct counsel are

Exhibit F

FTCA.

Leihinahina Sullivan, Pro Se Plaintiff-Appellant
% Honolulu Federal Detention Center ("FDC")
PO Box 30080
Honolulu, Hawaii 96820

United States Court of Appeals for the
Ninth Circuit

Leihinahina Sullivan,
Plaintiff-Appellant,

vs.

Reneau Kennedy, et. al,
Defendant, Appellee.

No. 21-16123
D.C No. 1:21-cv-00235-JAO-RT

Appellant's Opening Bnef
Due: August 30, 2021

Exhibits A, B, C, D.

Appellant's Opening Bnef

I am appealing the order dismissing my (1) Complaint and (2) Denying IFP Application & Mohon to request IFP Application (Dkt. No. 8 Exhibit A) & the Order for Reconsideratn of Order (1) Dismissing Complaint and (2) Denying IFP Application and Motion to Request IFP Application (Dkt. #13 Exhibit B as District Court had determined that Defendant is immuned from liability as a Court appointed psychologist.

"Court finds that quasi-judicial immunity applies, § 1915(e)(2)(B)(iii) mandates dismissal." See Chavez v. Robinson, 817 F.3d 1162, 1167 (9th Cir. 2016) Stribling v. Matherly, No. 2:18-cv-0086 CKD P, 2018 WL 6042782, at *2 (E.D Cal. Nov. 19, 2018)("Plaintiff's complaint must be dismissed because it 'seeks monetary relief from a defendant who is immune from such relief.'" (quoting 28 U.S.C. 1915(A)(b)(2)." Dkt 8 at Page ID# 39 (Exhibit A)

I filed a Motion for Reconsideration, Dkt#11 (Exhibit C) on June 21, 2021, stating that Defendant had Qualified Immunity as she did/to follow Honorable Judge J. Michael Seabright's ("Judge Seabright") Court Orders.

(1) Ordered sua sponte over my objections, my confidential psychiatric medical records from my treating physician Dr. Ethan Pien; (See Dkt#11 Page ID# 3-4; Exhibit C);

(2) Judge Seabright then gave those records (confidential privilege) to Defendant, with orders that she submit her supplemental report to the Court first to review and make redactions before supplemental report was to be provided to Government. (Id. at 4).

All of these safeguards was put into place by Judge Seabright as in my Criminal Case, me and Government filed Simultaneous briefing [See Crim. Case No. 17-00104 JMS-KJM (D. Haw) Dkt# 1042 & 1043, respectively), where we both cited to Jaffee v. Redmond, 518 U.S. 1 (1996) and Trammel v. United States, 445 U.S. 40, 51; stating in my brief that "a Judge Vested By Statute to Subpoena a criminal Defendant's Psychiatric Records, Cannot Over A Defendant's Express Objection in A Sua Sponte Competency Hearing When The Defendant Did Not Waive Her Privilege to Her Psychotherapist-Patient Relationship." (Dkt#11 Page ID 4, & Exhibit C).

Defendant failed to follow a Courts Order, Defendant did not have me sign any informed-consent (I refused), she is in violation of other Laws such as HIPAA, Privacy Rights, therefore, I ask that my Appeal, respectfully be granted, and find that Defendant had qualified immunity not quasi-judicial immunity when she failed to follow Court Order and the law, going outside the parameter of Defendant's duty, and to allow my pleading (Dkt#1 Exhibit D).

I am a pretrial civilly detained inmate at the Honolulu Federal Detention Center, pro se plaintiff, therefore, my pleadings should be liberally construed, "benefit of liberal construction," Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010), See Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed 2d 1081 (2007)("A document by pro se is to be liberally construed.") In addition, the court may not dismiss a claim because pro se litigant failed to set forth a complete legal theory supporting the claims alleged. See Johnson v. City of Shelby, 524 U.S. 10, 135 S.Ct. 346, 346, 190 L.Ed 2d 309 (2014)(per curiam). The Ninth Circuit instructs courts to "construe pro se filings liberally". Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010); the rule of liberal construction "protects the rights of pro se litigants to self-representation and meaningful access to courts"). Pouncil v. Tilton, 704 F.3d 568, 575-76 (9th Cir. 2012). I have no tools or access to law library so I am using rubbish (I apologize) paper & pencil and entering this pleading into the internal mail at FDC on July 11, 2021. I declare under penalty of perjury the aforementioned is true.

/s/ [signature] Dated: July 11, 2021
Honolulu, Hawaii

Exhibit G

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEIHINAHINA SULLIVAN, AKA Jen, AKA Jennifer, AKA Jennifer Sullivan, AKA Lei Sullivan,

Plaintiff-Appellant,

v.

RENEAU KENNEDY, Ed.D., Clinical & Forensic Psychology, et al.; JOHN & JANE DOES,

Defendants-Appellees.

No. 21-16123

D.C. No.
1:21-cv-00235-JAO-RT
District of Hawaii,
Honolulu

ORDER

A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

(1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR

(2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not move to dismiss this appeal, the court may dismiss the appeal as frivolous, without further notice. Any determination of whether the appeal is frivolous will be based on the opening brief received on July 15, 2021, and appellant's statement, if any, in response to this order.

AT/MOATT

If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

The briefing schedule for this appeal remains stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Allison Taylor
Deputy Clerk
Ninth Circuit Rule 27-7

Exhibit H

Leihinahina Sullivan, Pro Se Plaintiff
c/o FDC #09779122
P.O. Box 30080
Honolulu, Hawaii 96820

United States Court of Appeals
For The Ninth Circuit

Leihinahina Sullivan, Pro Se Plaintiff-Appellant, vs. Renceau Kennedy, Ed.D, Clinical & Forensic Psychology, et.al. John & Jane Does, Defendant-Appellees.	No. 21-16123 D.C. No. 1:21-cv-00235-JAO-RT District of Hawaii, Honolulu Response to Ninth Circuit Order Filed July 23, 2021, Statement Explaining Why Appeal Is Not Frivolous and Should Go Forward

Response to Order Filed July 23, 2021 Statement Explaining Why Appeal Is Not Frivilous and Should Go Forward

I am appealing the decision dated June 23, 2021 Order denying my Motion For Reconsideration (Civ. No. 1:21-cv-00235-JAO-RT, DKT. No. 13 (Motion to Reconsider Dkt. #No. 9). My appeal is not frivolous and the following issues has not been resolved and respectfully, should be determined in order for this Court to rule on my appeal from Federal District Court's dismissal of my Complaint.

I. Constitutional Issues Presented That Has Not Been Addressed

(1) Whether a Judge vested by statute to subpoena a criminal defendant's psychiatric records, cannot over a criminal defendant's express objection in a sua sponte competency hearing when defendant did not waive her privilege to her psychotherapist-patient relation? (See Jaffee v. Redmond, 518 U.S. 1 (1996) citing Trammel v. U.S., 445 U.S. 40, 51 (1980) recognizing and confirming that a psychotherapist-patient privilege exists under federal common law. Jaffee held, "that confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Rule 501 of the Federal Rule of Evidence." 518 U.S. at 15.

(2) Whether a Court appointed clinical psychologist hired to perform the sua sponte competency report (Defendant) is quasi-judicially immune from suit (civil damages action) or qualified immune from her allegedly unconstitutional conduct in performing her function violating both State and Federal Statutes? (see Harlow v. Fitzgerald, 457 U.S. 800, 819, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982), Pierson v. Ray, 386 U.S. 547, 554, 87 Sup. Ct. 1213, 18 L. Ed. 2d 288 (1967), According to the U.S. Supreme Court governmental officials or those performing tasks for the Courts are immunized from liability if "their conduct [did] not violate clearly established statutory constitutional rights of which a reasonable person would have known." Harlow, 457

(3) If defendant is entitled to qualified immunity (not quasi-judicial immunity, is defendant immuned from suit when she transcribed onto the sua sponte competency report all of plaintiffs treating psychiatrist psychotherapist-patient records and shared it with third-parties in violation of clearly established federal and State laws, and Constitutional Right to Privacy?

The U.S. Constitution protects an "individual interest in disclosing personal matters," In re Crawford, 194 F.3d 954, 958 (9th Cir. 1999), medical information Norman-Bloodsaw v. Lawrence Berkeley Lab, 135 F.3d 1260, 1269 (9th Cir. 1998 ("The Constitutionally protected privacy interest in avoiding disclosure of personal matters clearly encompasses medical information and its confidentiality." issues in order to determine if Federal District Court's dismissal of my claim should be upheld. No case on point for issues presented, the 9th Circuit has jurisdiction to decide these

II. This Court Should Find that a Judge Vested By Statute to Subpoena A Criminal Defendant's Psychiatric Records, Cannot Over a Criminal Defendant's Privilege to Her Psychotherapist-Patient Relationship, When a Criminal Defendant Did Not Waive that Privilege and Objected to the Ordering of those Privileged Records (Fnt 1)

This Court should find that a Judge vested by statute to subpoena a criminal defendant's psychiatric records, cannot over a criminal defendant's privilege to psychotherapist-patient relationship and is not subject to any balancing test when a criminal defendant did not waive that privilege and objected to the ordering of those privilege records in a second sua sponte competency hearing. The United States Supreme Court in Jaffee v. Redmond, 518 U.S. 1, 8, 135 L.Ed 2d 337, 116 S.Ct. 1923 (1996), recognized a psychotherapist-patient privilege as it relates to the Federal Rules of Evidence, in my case I objected to the sua sponte ordering of a second competency report and ordering of my treating psychiatrist medical records (psychotherapist-patient records with my treating physician Those records was then provided to Court appointed clinical psychologist in order to determine if I could continue to represent myself pro se, under Indiana v. Edwards, 554 U.S. 164, 177-78, 128 S.Ct. 2379, 171 L.Ed 2d 345 (2008).

III. This Court Should Find that a Court Appointed Clinical-Psychologist Hired to Perform the Sua Sponte Competency Report (Defendant) Is Not Quasi-Judicially Immuned but Qualified Immunity Should Apply to Allegedly Unconstitutional Conduct In Performing Her Function Violating Both State and Federal Statutes

Defendant was given my medical records from my treating physician (psychiatrist which was court ordered over my objections, she failed to follow court order that those records (41 records psychotherapist-patient records) was to remain confidential when she shared it with third parties, without my informed consent, in violation of State & Federal laws, and my constitutional rights to privacy. The records were given first to Judge Scribner who then gave it to Defendant. Defendant transcribed all of those records onto a sua sponte competency report then distributed to third parties.

Fnt. 1: No cases on point for issues presented, the Ninth Circuit has jurisdiction to decide these issues to determine if the Federal District Court's dismissal of my civil complaint should be upheld.

The United States Constitution protects an "individual interest in disclosing personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999), medical information, Norman-Bloodsaw v. Lawrence Berkeley Lab, 135 F. 3d 1260, 1269 (9th Cir 1998) (The Constitutionally protected privacy interest in avoiding disclosure of personal matters clearly encompasses medical information and its confidentiality) In my case clinical psychologist, physicians, and other healthcare professionals must maintain confidentiality of medical records in order to maintain their licences, in the State of Hawaii Health Protected Act, no medical records can be disclosed to any third party without first obtaining informed consent, or an exception applies such as reporting to authority if it puts life at risk of a person or another. In the Court ordering my treating psychiatrist records to determine if I could represent myself pro se over my objection is not a valid reason to pierce my psychotherapist-patient relationship.

Dr. Kennedy's decision to transcribe those records onto her report then distributing it to third parties without my informed consent, and against Court orders, in violation of federal and State laws, this Court should find that my claim should not be dismissed and I be allowed to amend my claim.

IV. Conclusion

I respectfully ask that this Court grant my appeal on the issues presented in order to determine if my complaint should be dismissed.

1st [signature]

dated: July 28, 2021 Honolulu, Hawaii

Appendix I

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 17 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEIHINAHINA SULLIVAN, AKA Jen, AKA Jennifer, AKA Jennifer Sullivan, AKA Lei Sullivan,

Plaintiff-Appellant,

v.

RENEAU KENNEDY, Ed.D., Clinical & Forensic Psychology, et al.; JOHN & JANE DOES,

Defendants-Appellees.

No. 21-16123

D.C. No.
1:21-cv-00235-JAO-RT
District of Hawaii,
Honolulu

ORDER

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

Upon a review of the record, the response to the order to show cause, and the opening brief filed on July 15, 2021, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 4), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

No further filings will be entertained in this case.

DISMISSED.

SZ/MOATT

Appendix J

ORIGINAL

Leihinahina Sullivan, Pro Se Plaintiff
% FDC Honolulu #09179122
PO Box 30080
Honolulu, Hawaii 96820

In The United States District Court
For The District of Hawaii

Leihinahina Sullivan, Pro Se Plaintiff, ("Sullivan"), vs. Reneau Kennedy, Ed D Clinical & Forensic Psychology, Et. Al; John & Jane Does 1-100, Defendants.	Civil Action No. 21-00235-JAO-RT Motion to Request Application to Proceed In Forma Pauperis By A Prisoner ("Motion"); Other Request:

Motion to Request Application to Proceed In Forma Pauperis By A Prisoner

Sullivan, a pretrial civilly detained inmate at the Honolulu Federal Detention Center ("FDC") files this Motion to Request Application to Proceed In Forma Pauperis By A Prisoner ("Motion") as on May 18, 2021 I filed my initial complaint ECF No. 1; a deficiency order was signed by Chief Administrative Honorable Judge J. Michael Seabright on May 18, 2021 ECF No. 2; Order Setting Telephonic Rule 16 Scheduling Conference for 09:00 A.M. on July 19, 2021 before Magistrate Honorable Judge Rom Trader was signed by Judge Seabright ECF No 3; and I submitted an Application to Proceed in District Court without Prepaying fees ECF No. 4. Respectfully, my situation has changed and I need to apply for An Application to Proceed In Forma Pauperis By A Prisoner. On

May 20, 2021 hearing in front of Honorable Magistrate Judge Kenneth J. Mansfield my pretrial release so I could prepare for my case/trial was revoked (See 1:17-cr-00104-JMS-KJM ECF Nos. 1121, 1122, 1123 [I apologize cause I am not 100% on the ECF Nos. cause while here at FDC I am given no tools, no library hours, locked up over 23 hours a day in an 8'x 10' cell). Because of the changes in my circumstances I am respectfully asking/pleading that my motion be granted so I can continue to advocate for my Constitutional Rights in this matter. In addition, I need to complete a summons so that Defendant can be served the complaint (ECF No.1) And please give me an extention of time as FDC goes through my mail, time for delivery to procedurally get all the paperwork in timely as not to give up my right to proceed on this Constitutional matter.

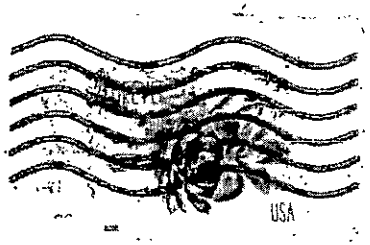
Sullivan is a pro se civilly detained at the Honolulu Federal Detention Center ("FDC"), therefore, courts must construe the allegations of pleadings liberally and must afford the pro se the benefit of the doubt. See Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988) (the rule that courts construe liberally the pro se litigants filings from strict application of rules, especially in constitutional claims violations & civil rights cases filed by pro se inmates); Pouncil v. Tilton, 704 F.3d 568, 575-76 (9th Cir. 2012) the rule of liberal construction "protects the rights of pro se litigants to self-representation and meaningful

access to the Courts".) Sullivan is an inmate confined at the Honolulu FDC on May 31, 2021, I declare under penalty of perjury the foregoing is true and correct (see U.S.C. § 1746, 18 U.S.C. § 1621) and is entering this Motion in the internal mail system of FDC I also apologize for having to use non-standard tools (i.e. lined paper and pencil) to file this pleading am I am not given any tools in here at FDC to draft this.

/s/ [signature]
May 31, 2021 Honolulu, Hawaii

Name: Leihinahina Sullivan, Prose Defendant
Number: 09779122
FDC Honolulu
P.O. Box 30080
Honolulu, HI 96820

HONOLULU HI 967
2 JUN 2021 PM 1 L



Legal Mail

RECEIVED
CLERK, U.S. DISTRICT COURT
JUN 04 2021
DISTRICT OF HAWAII

Attn: Clerk
United States District Court
District of Hawaii
300 Ala Moana Blvd., C-338
Honolulu, HI 96850-0338

96850-033838