

21-6354
No. 21

IN THE

SUPREME COURT OF THE UNITED STATES

ERIK MISHIYEV,

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

Petitioner,

v.

ALPHABET, INC.;
XXVI HOLDINGS, INC.;
GOOGLE, LLC;
YOUTUBE, LLC;
YOUTUBE ENTERTAINMENT STUDIOS, INC.;
and DOES 1 THROUGH 10, inclusive,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

- Whether The United States Court of Appeals For the Ninth Circuit Order allowed YouTube to deprive the Petitioner of his Due Process rights under the 1st Amendment of the United States Constitution, when YouTube censored the free speech of the Petitioner and terminated his YouTube channel?
- Why is YouTube hiding crucial information? After years of trying to get problems with his channels fixed, Petitioner threatened YouTube with a lawsuit after their google chat reps were hiding some crucial information from him such as proof of if they were actually sending his new videos he uploads to his subscribers who wanted to be notified. YouTube said "We can't share this information with you."
- Why does YouTube allow countless other DJ channels to post the same content as petitioner without any penalties?

LIST OF PARTIES

**The caption contains the names of all of the parties to the proceedings and they
are also listed below:**

- 1) ERIK MISHIYEV, Petitioner;
- 2) ALPHABET, INC., Respondent;
- 3) XXVI HOLDINGS, INC., Respondent;
- 4) GOOGLE, LLC, Respondent;
- 5) YOUTUBE, LLC, Respondent;
- 6) YOUTUBE ENTERTAINMENT STUDIOS, INC., Respondent;
- 7) DOES 1 THROUGH 10, inclusive, Respondent.

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ii, 1

PETITION FOR A WRIT OF CERTIORARI
OPINIONS BELOW

United States Court of Appeals For the Ninth Circuit Order, issued on August 27, 2021. This opinion was not published and is Appendix A in the Appendix.

JURISDICTION

This Petition is timely as pursuant to Supreme Court Rule 13, Review On Certiorari: Time For Petitioning, the time to file a Petition For a Writ of Certiorari runs from the date of entry of the judgment or order sought to be reviewed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the 1st Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

1. The Petitioner sued based upon Breach of Contract, Intentional Interference With Prospective Business Advantage, Interference With Contractual Relations, Negligence, Negligent Interference With Prospective Economic Relations and Injunctive Relief.
2. The Petitioner was one of the most highly successful music DJ's in the hip-hop industry and operated a YouTube channel that as of 2018 had over 250,000 subscribers. The Petitioner was known as "DJ Short-E". YouTube is a video-sharing site where close to a billion internet users post videos. Petitioner spent 10 years building up his YouTube channel. Users can monetize their

channels, while making a good living from Google's AdSense program which places advertisements on users videos and channels. The more views the more money you make.

3. YouTube channels operate much like television channels, with each individual channel, being able to develop its own content, interact with users and seek out and gain subscribers, who are then notified each time that channel creates new videos.
4. The Petitioner was one of the early users of YouTube, having created several YouTube channels, as early as 2007.
5. In 2007, YouTube was still a very new platform. It has since that time become extremely popular.
6. The number of subscribers that a YouTube channel has is a highly sought after goal and in the early part of 2017 the Petitioner received a congratulatory letter from the then CEO of YouTube, commemorating his channel reaching 100,000 subscribers and stating, "No one can take this away from you". (ER 1 and 2)
7. Tens of thousands of YouTubers posted and continue to post content similar to the Petitioner and it was only after the content that was posted appeared to be of a politically conservative nature, that the Petitioner was censored, shadow banned and bombarded with copyright infringement complaints, views to his page were diverted and his channel was ultimately terminated. For no reason, on or about December 14, 2018 YouTube notified Petitioner that they were permanently cancelling his YouTube channels because of his litigation threat

with respect to the issues he has been having with his channels. This left the Petitioner, a self-employed, life-long Democrat, with no livelihood.

8. At the time that the Petitioner's YouTube channel was cancelled, he had accumulated over 100 million views and earned over \$310,000 from YouTube. Due to the actions of the Defendant/Appellee, the Petitioner lost his income, his reputation was defamed, his credit score was ruined and he was placed on the verge of bankruptcy. Adding insult to injury, YouTube now allows other YouTubers to go by the name "DJ Short-E", even though the Petitioner has a federal trademark for the name "DJ Short-E", with U.S. Serial Number: 85930668, U.S. Registration Number: 4493986, U.S. Registration Date: Mar 11, 2014, Mark: DJ SHORTE, Owner: Mishiyev, Erik--
9. When the Petitioner filed a lawsuit in the United States District Court for the Northern District of California for Breach of Contract, Intentional Interference With Prospective Business Advantage, Interference With Contractual Relations, Negligence, Negligent Interference With Prospective Economic Relations and Injunctive Relief, YouTube filed a Motion To Dismiss and it was granted.
10. Petitioner has never been sued for copyright and never lost a copyright dispute. YouTube did not follow their own terms and conditions and copyright policies and for the first time ever didn't send Petitioner's counter notifications to claimants so he could defend himself against these frivolous claims, this all started happening the day after they notified Petitioner that they were taking down his channels, which seemed to be a retaliation of some sort to his litigation

threat. It is known that people put frivolous copyright claims on popular videos to try and steal ad earnings and to stifle competition and to stop any momentum the video has by taking it down which causes a Youtuber to get a strike on their channel. After three strikes the channel gets taken down. YouTube allows users to file a dispute and if no court action is taken the videos must go back online and the strike should then be removed. Petitioner argues that any copyright issues that arose were covered by the Fair Use doctrine.

11. Petitioner appealed the dismissal to the United States Court of Appeals For the Ninth Circuit Order, which on August 27, 2021 issued an Order upholding the dismissal after a *de novo* review.
12. Petitioner noticed illegal activity by YouTube when his subscribers contacted him to tell him what was happening to them.
13. After years of trying to get problems with his channels fixed, Petitioner threatened YouTube with a lawsuit after their google chat reps were hiding some crucial information from him such as proof of if they were actually sending his new video uploads to his subscribers who wanted to be notified. YouTube said "We can't share this information with you."
14. Constant contact and GoDaddy email marketing and countless other companies show full transparency on distribution on the back end, but YouTube does not! Petitioner's last two lawyers were terminated for not representing him properly and for unethical behavior and one has an investigation with the California Bar with Case No. 20-O-12263 and this is why the Petitioner is now pro-se.

REASONS FOR GRANTING THE PETITION

The issue of how much power YouTube and social media companies have over the day to day lives of Americans, is of pressing concern to the public and needs to be addressed by the U.S. Supreme Court.

I. THE PETITIONER WAS DEPRIVED OF HIS FIRST AMENDMENT RIGHT OF FREE SPEECH

An appeals court reviews the granting of a Motion To Dismiss for failure to state a claim under F.R.C.P. 12(b)(6) de novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034 (9th Cir. 2011). In doing so, this Court “inquire[s] whether the complaint’s factual allegations, together with all reasonable inferences, state a plausible claim for relief.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). The Court’s review is limited to the facts pleaded, documents attached to or incorporated by reference in the complaint, with inferences drawn in the light most favorable to the plaintiff. *OSU Student All. v. Ray*, 699 F.3d 1053, 1058 (9th Cir. 2012); *Barker v. Riverside Cty. Off. of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The plausibility standard is not a “probability requirement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “If there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff’s complaint survives a motion to dismiss under Rule 12(b)(6).” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

If a complaint is dismissed, leave to amend must be granted unless amendment is futile. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

All of these arguments were cited, to no avail.

Petitioner now sets forth that key to this discussion should be a new law that was enacted, which is Fla. Stat. § 501.2041(2)(j), which prohibits social media companies such

as YouTube from removing prohibits a social media platform from taking action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. "Censor" is broadly defined to include not just deleting content but adding content "Deplatform" means to ban a user permanently or for longer than 14 days.

This is what happened to the Petitioner, but he filed his cases in California, even though he is now a full-time resident of the state of Florida.

In the case of *NetChoice, LLC v. Moody*, 2021 U.S. Dist. LEXIS 121951 (N.D. Fla. 2021), this law was reviewed and an injunction was denied by the Florida Northern District Federal Court, but that ruling is now on appeal to the United States Court of Appeals For the Eleventh Circuit.

This is a pressing issue and has been argued by many people.

Petitioner sets forth that if the Eleventh Circuit upholds the denial of the injunction, that in connection with the Ninth Circuit Order in this matter, there is a controversy that the U.S. Supreme Court should review.

Namely, is the Ninth Circuit Order in this case correct, that Petitioner failed to set forth a cause of action in his Complaint against YouTube.

Key to this discussion is the U.S. Supreme Court case of *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974), which held that a state cannot regulate the content of a newspaper. However the statute in that matter, involved a penalty.

In this matter, YouTube has taken the freedoms that the press has and extended those to regulate content creators such as the Petitioner.

CONCLUSION

The petition for writ of certiorari should be granted for the foregoing reasons.

DATED this 16th day of November, 2021.

Respectfully submitted,

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APPENDIX A