

No. _____

IN THE
SUPREME COURT OF THE
UNITED STATES



CHARLES G. KINNEY,
Petitioner,
v.

UNITED STATES OF AMERICA;
E.M. CHEN,
Respondents.



On Petition For Writ Of Certiorari To The
Ninth Circuit Court of Appeals (21-15942)

US District Court No. 3:21-mc-80103-JST
Northern District of California,
San Francisco (FTCA claim)



**PETITION and APPENDIX FOR A
WRIT OF CERTIORARI**



CHARLES KINNEY
Petitioner in pro se
5826 Presley Way
Oakland, CA 94618
charleskinney@hotmail.com
Phone: 510-654-5133

QUESTIONS PRESENTED

Can the “law enforcement proviso” exception to the FTCA’s exclusion of intentional torts by law enforcement officers (acting within the scope of their employment) be used when an intentionally overbroad ministerial pre-filing order is made by a US District Court Judge if the order is an abuse of process against or malicious prosecution of a judicial-corruption whistle-blower who tries to assert his US Constitutional rights.

Here, an overbroad and global (i.e. not narrowly tailored) vexatious litigant pre-filing order was issued by US District Court Judge E.M. Chen against whistle-blower Kinney. Kinney filed a FTCA claim and, after it was denied, a complaint was filed. Kinney’s complaint was dismissed *sua sponte*. Kinney’s appeal paperwork was sent to the wrong court and then dismissed *sua sponte*.

Are vexatious litigant laws unconstitutionally vague when an overbroad pre-filing restriction is placed upon a whistle-blower petitioner?

Is a federal Judge a law enforcement officer with the power to execute searches, seize evidence, or make arrests for violations of Federal law (e.g. contempt powers) so that the Judge is subject to the FTCA’s “law enforcement proviso” exception?

Does USDC Judge Chen have immunity for his intentionally-overbroad ministerial (non-judicial) acts that constitute an abuse of process or malicious prosecution against a whistle-blower?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those specified and appearing in the caption to this petition.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
INDEX TO APPENDIX	iv
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI ..	1
OPINIONS BELOW	6
JURISDICTION	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	10
STATEMENT OF THE CASE	10
SUMMARY OF LOWER COURT PROCEEDINGS	11
STATEMENT OF FACTS	11
REASONS FOR GRANTING THE WRIT OF CERTIORARI	12
Certiorari Should Be Granted Because the Judges Acted as a Prosecutors, For Which No Immunity Exists, When Kinney's Amended FTCA Appeal Was Sent to the "Wrong" Appellate	

Court (the Ninth Circuit) And The Ninth Circuit Dismissed Kinney's FTCA Appeal Which Violated Petitioner's Federal Constitutional Rights; And The Method and Application of This Security Order Severely Impairs Meaningful Review of Important Questions of Law; And Severely Impairs Rights Guaranteed Under The First, Fifth, Eighth, And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals	12
CONCLUSION	17
APPENDIX	

INDEX TO APPENDIX

Sequential No.
In Document

Page numbers at top of page:

Appendix A: 7/19/21 “final” decision by the Ninth Circuit (the *wrong* court) in which it dismissed Kinney’s amended appeal *sua sponte* [Dk #2] . . 1

Appendix B: 4/29/21 *sua sponte* dismissal order as to Kinney’s complaint by US District Court Judge Jon S. Tigar [Dk #6] 3

Appendix C: 5/27/21 amended notice of appeal by Kinney to the US Court of Appeal for the Federal Circuit (the *correct* court) [Dk #10, first pg.] . . 6

TABLE OF AUTHORITIES
CASES

<u>Aetna Life Ins. Co. v. Lavoie</u> , 475 U.S. 813 (1986)	16
<u>Airlines Reporting Corp. v. Renda</u> , 177 Cal.App.4 th 14 (Cal. 2009)	16
<u>American Ry. Express Co. v. Levee</u> , 263 U.S. 19 (1923)	9
<u>Ashelman v. Pope</u> , 793 F.2d 1072 (9 th Cir. 1986)	8
<u>Bauer v. Texas</u> 341 F.3d 352 (5 th Cir. 2003)	13
<u>BE & K Constr. Co. v. NLRB</u> , 536 U.S. 516 (2002)	14
<u>Bivens v. Six Unknown Narcotics Agents</u> , 403 U.S. 388 (1971)	3
<u>Bosse v. Oklahoma</u> , 580 U.S. __, 137 S.Ct. 1 (2016)	7, 17
<u>Bracy v. Gramley</u> , 520 U.S. 899, (1997)	16
<u>Bradley v. Fisher</u> , 80 U.S. 335 (1872)	10
<u>Bunch v. United States</u> , 880 F.3d 938 (7 th Cir. 2018)	3

<u>Burns v. Reed,</u> 500 U.S. 478 (1991)	10
<u>Canatella v. State of California</u> 304 F.3d 843 (9 th Cir. 2001)	13
<u>Caperton v. A.T. Massey Coal Co., Inc.,</u> 129 S. Ct. 2252 (2009)	16
<u>Cohen v. California,</u> 403 U.S. 15 (1971)	9
Colorado	17
<u>Colorado River Water Cons. Dist. v. US,</u> 424 U.S. 800 (1976)	17
<u>Devereaux v. Abbey</u> 263 F.3d 1070 (9 th Cir. 2001)	13
<u>Ex Parte Young,</u> 209 U.S. 123 (1908)	3
<u>Forrester v. White,</u> 484 U.S. 219 (1988)	3, 9
<u>Georgevich v. Strauss,</u> 772 F.2d 1078 (3 rd Cir. 1985)	3
<u>Grannis v. Ordean,</u> 234 U.S. 385 (1914)	15
<u>Griffin v. Illinois,</u> 351 U.S. 12 (1956)	15

<u>Hafer v. Melo</u> 502 U.S. 21 (1991)	13
<u>Hartman v. Moore</u> , 547 U.S. 250 (2006)	4
<u>Hooten v. H Jenne III</u> , 786 F.2d 692 (5 th Cir. 1986)	14
<u>In re Justices of Supreme Court of Puerto Rico</u> , 695 F. 2d 17 (1st Cir. 1982)	3, 13
<u>In re Kinney</u> , 201 Cal.App.4 th 951 (Cal. 2011)	14
<u>In re Murchison</u> , 349 U.S. 133 (1955)	16
<u>Janus v. Am. Fed. of St. Mun. Empl. Cncl. 31</u> , 585 U.S. __ (2018)	13
<u>John v. Superior Court</u> , 63 Cal.4 th 91 (Cal. 2016)	4
<u>Johnson v. United States</u> , 135 S.Ct. 2551 (2015)	8
<u>Kinney v. Clark</u> , 12 Cal.App.5 th 724 (Cal. 2017)	14
<u>Lacey v. Maricopa County</u> , 693 F.3d 896 (9 th Cir 2012)	9, 14
<u>Levin v. United States</u> , 568 U.S. 503 (2013)	2

<u>McCarthy v. Madigan</u> , 503 U.S. 140 (1992)	17
<u>Michigan-Wisconsin Pipe Line Co. v. Calvert</u> , 347 U.S. 157 (1954)	9
<u>Millbrook v. United States</u> , 569 U.S. 50 (2013)	2
<u>Mireles v. Waco</u> , 502 U.S. 9 (1991)	10
<u>Moy v. United States</u> , 906 F.2d 467 (9 th Cir. 1990)	9
<u>NAACP v. Alabama ex rel. Flowers</u> , 377 U.S. 288 (1964)	15
<u>Nat. Inst. of Fam. & Life Adv. v. Becerra</u> , 585 U.S. ____ (2018)	13
<u>Navarro v. Encino Motorcars, LLC</u> , 845 F.3d 925 (9 th Cir. 2017)	7, 17
<u>Olson v. Cory</u> , 35 Cal.3d 390 (Cal. 1983)	9
<u>Peralta v. Heights Medical Center, Inc.</u> , 485 U.S. 80 (1988)	15
<u>Rankin v. Howard</u> , 633 F.2d 844 (9 th Cir. 1980)	8
<u>Ricotta v. State Bar of California</u> , 4 F.Supp.2d 961 (S.D. Cal. 1998)	3, 8

<u>Riley v. Nat. Fed. of the Blind of NC, Inc.</u> , 487 U.S. 781 (1988)	13
<u>Ringgold-Lockhart v. County of Los Angeles</u> , 761 F.3d 1057 (9 th Cir. 2014)	4, 8
<u>Saucier v. Katz</u> , 533 U.S. 194 (2001)	10
<u>Sinochem Intl. Co. v. Malaysia Intl. Ship Corp.</u> , 549 U.S. 422 (2007)	16
<u>Sloman v. Tadlock</u> , 21 F.3d 1462 (9 th Cir. 1994)	14
<u>Smith v. Bennett</u> , 365 U.S. 708 (1961)	15
<u>Soranno's Gasco, Inc. v. Morgan</u> , 874 F.2d 1310 (9 th Cir. 1989)	14
<u>Stump v. Sparkman</u> , 435 U.S. 349 (1978)	8
<u>Sup. Ct. of Virginia v. Consmrs. Un. of U.S.</u> , 446 U.S. 719 (1980)	3, 13
<u>Thomas v. Collins</u> , 323 U.S. 516 (1945)	9
<u>Tumey v. Ohio</u> , 273 U.S. 510 (1927)	16
<u>United Mine Workers v. Illinois Bar Assn.</u> , 389 U.S. 217 (1967)	9, 14

<u>United States v. Murphy</u> , 768 F.2d 1518 (7 th Cir. 1985)	13
<u>United States v. Shearer</u> , 473 U.S. 52 (1985)	2
<u>Weissman v. Quail Lodge, Inc.</u> , 179 F.3d 1194 (9 th Cir. 1999)	4, 8
<u>Williams-Yulee v. Florida Bar</u> , 575 U.S. 433 (2015)	4
<u>Withrow v. Larkin</u> , 421 U.S. 35 (1975)	16
<u>Zarcone v. Perry</u> , 572 F.2d 52 (2 nd Cir. 1978)	13
<u>CONSTITUTIONAL PROVISIONS, STATUTES, AND MISC</u>	
U.S. Const., amend. I	13
U.S. Const., amend. V	13
U.S. Const. amend VIII	13
U.S. Const., amend. XIV	13
18 U.S.C § 152 et seq.	9
18 U.S.C. Sec. 1346 (honest services)	9
18 U.S.C. Sec. 1951 (Hobbs Act)	9

18 U.S.C. Secs. 1961 et seq (RICO)	9
28 U.S.C. Sec. 455	1, 5, 10, 16
28 U.S.C § 1254(1)	7
28 U.S.C § 1257(a)	7
28 U.S.C § 1295	2, 5, 7, 10, 11, 12
28 U.S.C § 1331	10
28 U.S.C. Sec. 1346	4, 7, 10
28 U.S.C. Sec. 1441	10
28 U.S.C. Sec. 1443	10
28 U.S.C § 2101(c)	7
28 U.S.C. Sec. 2107	5, 10
28 U.S.C. Sec. 2671	3, 10
28 U.S.C. Sec. 2674	2, 3, 7, 10
28 U.S.C. Sec. 2679	7
28 U.S.C § 2680(h)	2, 10
42 U.S.C. Sec. 1983	3

PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests a “writ of certiorari” issue to review the “final” judgment by the Ninth Circuit in No. 21-15942 on July 19, 2021 [NC Dk. #2; Appx. A, pg. 1] in which that Circuit (the “*wrong*” *appellate court*) dismissed Kinney’s May 27, 2021 amended FTCA appeal [USDC Dk. #10; Appx. C, pg. 6 (first page)] to the US Court of Appeals for the Federal Circuit in Washington DC (the “*correct*” *appellate court*).

On April 29, 2021, USDC Judge Jon Tigar dismissed Kinney’s FTCA complaint *sua sponte* [USDC Dk #6; Appx. B, pg. 3] only two days after that was filed on April 27, 2021 [USDC Dk #1].

The US District Court refused to forward Kinney’s amended appeal to the *correct appellate court*.

Instead, Kinney’s amended FTCA appeal was sent to the Ninth Circuit who has ignored that lower courts have been issuing overbroad ministerial (non-judicial) vexatious litigant pre-filing orders.

USDC Judge Tigar and the Ninth Circuit Judges didn’t recuse themselves (but they should have under 28 U.S.C. Sec. 455); and both these courts dismissed Kinney’s filings *sua sponte*.

The district court’s job of forwarding the appeal to the correct appellate court is without question a ministerial (non-judicial) act.

The only reasonable explanation is that the USDC Presiding Judge or Judge Tigar told the clerk to forward Kinney's amended appeal to the wrong appellate court (i.e. to the Ninth Circuit) rather than to the correct appellate court, the US Court of Appeals for the Federal Circuit, who has exclusive jurisdiction over FTCA appeals from the district courts. 28 U.S.C. Sec. 1295.

Kinney's FTCA claim was allowed under the "law enforcement proviso" exception to the exclusion for intentional torts under the Federal Tort Claims Act (FTCA) by federal "law enforcement officers" who are acting in the scope of their employment when abuses of process or malicious prosecutions occur. 28 U.S.C. Secs. 2674 and 2680(h); Levin v. US, 568 U.S. 503, 507 (2013); US v. Shearer, 473 U.S. 52, 54 (1985); Millbrook v. United States, 569 U.S. 50, 52-55 (2013).

USDC Judge Chen, as a federal law enforcement officer, had the power to execute searches, seize evidence, and/or make arrests for violations of Federal law (e.g. contempt powers) so that Judge is subject to the FTCA's "law enforcement proviso" exception. 28 U.S.C. Sec. 2680(h).

USDC Judge Chen, in the scope of his federal employment, did intentional acts against Kinney which constituted an abuse of process and/or malicious prosecution by issuing a global and overbroad vexatious litigant pre-filing order against Kinney (a ministerial non-judicial act).

The FTCA and the “law enforcement proviso” exception also apply to USDC Judge Tigar; and to the Ninth Circuit Judges involved here.

The United States has waived sovereign immunity in regards to intentional torts by federal law enforcement officers who commit abuse of process or malicious prosecution, and thus are subject to the “law enforcement proviso”. Bunch v. United States, 880 F.3d 938, 941 (7th Cir. 2018); 28 U.S.C. Sec. 2674.

It appears that individual Judges can be enjoined from any further involvement as to Kinney under 28 U.S.C. Sec. 2671 and Ex Parte Young, 209 U.S. 123 (1908), even though monetary damages are only available from the United States of America.

USDC Judge Chen, USDC Judge Tigar, and the Ninth Circuit Judges involved here do not have immunity because they were acting as prosecutors of Kinney, not as neutral arbitrators of a judicial dispute. Forrester v. White, 484 U.S. 219, 228 (1988); Ricotta v. State Bar of California, 4 F.Supp.2d 961, 972 (S.D. Cal. 1998); In re Justices of Supreme Court of Puerto Rico, 695 F. 2d 17, 24-25 (1st Cir. 1982); Supreme Court of Virginia v. Consumers Union of the U.S., 446 U.S. 719, 735-739 and fn. 15 (1980); Georgevich v. Strauss, 772 F.2d 1078, 1087-1089 (3rd Cir. 1985).

In addition to his FTCA claims, Kinney is entitled to pursue similar laws that exist as to *Bivens* claims in regards to violations of his rights. 42 U.S.C. Sec. 1983; Bivens v. Six Unknown Narcotics

Agents, 403 U.S. 388, 390-395 (1971); Hartman v. Moore, 547 U.S. 250, 252-254 (2006).

Time line:

On July 17, 2018, USDC Judge Chen issued a global and overbroad vexatious litigant pre-filing order against Kinney without any attempt to accurately determine the circumstances and the actual facts. Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1061-1067 (9th Cir. 2014) [need “substantive findings” by the court to support vexatious litigant order; any such order should be “narrowly tailored”]; Williams-Yulee v. Florida Bar, 575 U.S. 433 (2015) [government regulation of First Amendment rights must be “narrowly tailored”]; Weissman v. Quail Lodge, Inc., 179 F.3d 1194, 1197 (9th Cir. 1999) [Cal. vexatious litigant law never intended to “control attorney conduct”; it doesn’t apply to attorneys]; John v. Superior Court, 63 Cal.4th 91, 93-98 (Cal. 2016) [Cal. vexatious litigant law only applies to self-represented plaintiffs].

On July 12, 2020, Kinney filed a FTCA claim against USDC Judge Chen.

On Oct. 28, 2020, Kinney’s FTCA claim was denied.

On April 27, 2021, Kinney filed a FTCA complaint in US District Court. 28 U.S.C. Sec. 1346.

On April 29, 2021, USDC Judge Tigar summarily dismissed Kinney’s FTCA complaint (even though Judge Tigar should have recused himself given

the nature of Kinney's claim and his own personal bias under 28 U.S.C. Sec. 455). [App. B, 3]

On May 24, 2021, Kinney filed an appeal with the USDC (Dk #9).

On May 27, 2021, Kinney filed an amended appeal (Dk #10) that designated the *correct* appellate court: the "US Court of Appeals for the Federal Circuit" in Washington, DC since that court had exclusive jurisdiction over Kinney's FTCA appeal. 28 U.S.C. Sec. 1295. [App. C, 6]

Kinney's appeal and amended appeal were timely filed because he had 60 days to file his appeal since the defendant was the United States of America. 28 U.S.C. Sec. 2107(b).

On June 1, 2021, the USDC forwarded Kinney's appeal and amended appeal to the Ninth Circuit (Dk #11) even though Kinney had designated the US Court of Appeals for the Federal Circuit as the *correct* appellate court, and even though that Washington, DC court had exclusive jurisdiction over the FTCA appeal. 28 U.S.C. Sec. 1295.

On June 2, 2021, Kinney objected to the USDC sending his amended appeal to the *wrong* appellate court (Dk #12), but that was ignored.

On July 19, 2021, the Ninth Circuit made a "final" dismissal decision, but the Ninth Circuit was the "wrong" appellate court because it was not the

designated appellate court in Kinney's amended appeal. [Appendix A, page 1]¹.

On July 23, 2021, Kinney objected to the Ninth Circuit's involvement in the appeal (Dk #14).

On July 28, 2021, USDC Judge Tigar ignored that objection which shows that his ministerial acts in this matter were done intentionally (Dk #15).

OPINIONS BELOW

The judgment(s) sought to be reviewed (in reverse chronological order) are the:

1. The 7/19/21 "final" decision by the Ninth Circuit (i.e. the *wrong* appellate court) in which it dismissed *sua sponte* Kinney's amended appeal regarding his FTCA claims (Ninth Circuit, Dk #2) [Appendix A, pg. 1]; and
2. The 4/29/21 *sua sponte* dismissal order as to Kinney's FTCA complaint by USDC Judge Jon S. Tigar on 2 days after Kinney's FTCA complaint was filed (USDC Dk #6) [Appendix B, pg. 3].

For this Court's convenience, Kinney's 5/27/21 amended notice of appeal to the US Court of Appeal for the Federal Circuit (i.e. the *correct* appellate court) is included (USDC Dk #10, first page) [Appendix C, pg. 6].

¹ Citation method is Appendix ("App."), exhibit letter, and sequential page number.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code [“U.S.C.”], Secs. 1254(1), 1257(a), 1346, 2101(c), 2674, and 2679.

The US District Court improperly assigned the appeal to the Ninth Circuit, contrary to the specific directions in Kinney’s amended appeal and contrary to the exclusive jurisdiction of the Washington DC appellate court. 28 U.S.C. Sec. 1295. [App. A, 1; App. B, 3; and App. C, 6].

The key issues presented here have already been addressed by the U.S. Supreme Court. This Court has essentially said “follow the law” to all of the lower courts; see Bosse v. Oklahoma, 580 U.S. ___, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016).

The Ninth Circuit agreed with the holding in the *Bosse* case on Jan. 9, 2017 and at other times; see Navarro v. Encino Motorcars, LLC, 845 F.3d 925, 926-928 (9th Cir. 2017) [“We may not disregard the court’s existing, binding precedent”].

As shown by petitions filed by Kinney in this Court, the courts have not followed, and are still not following, clearly established law when it applies to his petitions (e.g. #15-1035, 15-5260, 15-6896, 15-6897, 15-6916, 15-7133, 16-252, 16-606, 17-219, 17-510, 17-574, 17-1143, 18-160, 18-504, 18-509, 18-510, 18-515, 18-517, 18-518, 18-906, 18-907, 18-908, 18-1095, 18-1096, 18-1138, 18-1345, 18-1349, 18-1352, 20-115, and 21-178, all of which involved binding precedent and facts in

Kinney's favor, but all of which were denied by this U.S. Supreme Court).

Here, the Judges had no immunity as to these ministerial (non-judicial) decisions when they acted as prosecutors. Stump v. Sparkman, 435 U.S. 349, 356-357 (1978) [loss of judicial immunity when there is complete absence of all jurisdiction]; Ashelman v. Pope, 793 F.2d 1072, 1075-1076 (9th Cir. 1986) (en banc) [exceptions to judicial immunity]; Ricotta v. State Bar of California, 4 F.Supp.2d 961, 972 (S.D. Cal. 1998) [judicial immunity "is not absolute"].

There is no sovereign immunity given the "law enforcement proviso" exception to the FTCA. Rankin v. Howard, 633 F.2d 844, 847-849 (9th Cir. 1980) [knew of statute].

As a separate but equally important issue, the vexatious litigant statute is unconstitutionally vague in its terms and/or as applied to attorney Kinney (e.g. when he is not a "party") for using a "categorical approach"; a "quota" methodology without considering whether the five adverse decisions over a seven year period were reasonably based, and/or an "it appears" standard. Johnson v. United States, 135 S.Ct. 2551, 2557-2563 (2015); Weissman v. Quail Lodge, Inc., 179 F.3d 1194, 1197 (9th Cir. 1999) [Cal. vexatious litigant law never intended to "control attorney conduct"; it doesn't apply to attorneys]; Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1061-1067 (9th Cir. 2014) [need "substantive findings" to support vexatious litigant order].

The assignment of Kinney's amended FTCA appeal to the Ninth Circuit was an abuse of discretion and a ministerial (non-judicial) intentional act subject to the FTCA. Olson v. Cory, 35 Cal.3d 390, 400-401 (Cal. 1983).

That erroneous assignment to the wrong appellate court, and the Ninth Circuit's dismissal, resulted in violation of Kinney's First Amendment right of redress and essentially criminalized Kinney's attempts to pursue his FTCA claim. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967) [one of "the most precious of the liberties safeguarded by the Bill of Rights"]; Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990); Thomas v. Collins, 323 U.S. 516, 530 (1945); American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

The availability of immunity is determined by the act. Here, the Kinney's amended FTCA appeal should not have been assigned to the Ninth Circuit.

These intentional acts were also honest services fraud, extortion by an "enterprise" (RICO), extortion by fear (Hobbs Act), and bankruptcy fraud. 18 U.S.C. 152 et seq; 18 U.S.C. Sec. 1346; 18 U.S.C. Secs. 1961 et seq.; and 18 U.S.C. Sec. 1951.

Here, the USDC and Ninth Circuit were acting as "prosecutors" to penalize whistle-blower Kinney. Forrester v. White, 484 U.S. 219, 228-229 (1988); Lacey v. Maricopa County, 693 F.3d 896, 911-913

(9th Cir. 2012) [“not necessarily immune for actions taken outside this process”]; Burns v. Reed, 500 U.S. 478, 495-496 (1991).

Those intentional acts were not decisions which required the exercise of discretion or judgment; and/or those were acts that can’t be performed by a judge (e.g. due to a clear absence of all subject matter jurisdiction). Mireles v. Waco, 502 U.S. 9, 12-13 (1991); Bradley v. Fisher, 80 U.S. 335, 351 (1872); Saucier v. Katz, 533 U.S. 194, 201 (2001).

In total disregard of the explicit instructions in Kinney’s amended FTCA appeal [App. C] and the exclusive jurisdiction from 28 U.S.C. Sec. 1295, Kinney’s amended FTCA appeal (USDC Dk #10) was assigned to the wrong appellate court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to address violations of federal law by district courts and Ninth Circuit.

The federal courts have exclusive and original jurisdiction under 28 U.S.C. Secs. 455, 1295, 1331, 1346, 1441, 1443, 2107, 2671, 2674, and/or 2680 to consider violations of the FTCA and intentional ministerial (non-judicial) acts by Judges.

STATEMENT OF THE CASE

This petition involves the blatant mis-direction of Kinney’s amended FTCA appeal to the wrong appellate court, contrary to 28 U.S.C. Sec. 1295.

Prior U.S. Supreme Court Petitions

A list of Kinney's prior petitions by case number has been provided herein. There were other *sua sponte* dismissals of Kinney's claims and appeals, but no proper review has occurred in any court.

SUMMARY OF LOWER COURT PROCEEDINGS

Petitioner has provided a procedural background in his "Time line" section above.

STATEMENT OF FACTS

A. Summary Of Statutory Provisions

The courts may not exercise jurisdiction inconsistent with the Constitution of the United States, with the California Constitution, or with applicable statutes.

The US Court of Appeals for the Federal Circuit in Washington, DC, is the *correct* appellate court for FTCA appeals and has *exclusive* appellate jurisdiction under 28 U.S.C. Sec. 1295.

Kinney's amended FTCA appeal designated that appellate court in his amended appeal, but the USDC and the Ninth Circuit ignored that.

B. Brief Statement of the Facts

Petitioner incorporates his above "Time line".

USDC Judge Tigar dismissed Kinney's FTCA complaint 2 days after it was filed. [App. B, 2]

The USDC sent Kinney's amended FTCA appeal to the Ninth Circuit (which was not the appellate court designated by Kinney) [App. C, 6].

The Ninth Circuit summarily denied Kinney's amended FTCA appeal. [App. A, 1].

The USDC had *no jurisdiction* to send Kinney's amended FTCA appeal to the Ninth Circuit.

The Ninth Circuit had *no jurisdiction* to enter any dismissal order because Kinney's amended FTCA appeal was sent to the "wrong" appellate court.

The Ninth Circuit acted contrary to the exclusive jurisdiction of the Washington DC court under 28 U.S.C. Sec. 1295.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because the Judges Acted as a Prosecutors, For Which No Immunity Exists, When Kinney's Amended FTCA Appeal Was Sent to the "Wrong" Appellate Court (the Ninth Circuit) And The Ninth Circuit Dismissed Kinney's FTCA Appeal Which Violated Petitioner's Federal Constitutional Rights; And The Method and Application of This Security Order Severely Impairs Meaningful Review of Important Questions of Law; And Severely

Impairs Rights Guaranteed Under The First, Fifth, Eighth, And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals.

By improperly dismissing Kinney's FTCA lawsuit and appeal, the Ninth Circuit and the US District Court are trying to silence on Kinney as to the ongoing judicial corruption as to overbroad vexatious litigant pre-filing orders in violation of the *Janus*, *NIFLA* and *Riley* decisions. [App. A, 1; App. B, 3] Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. __ (2018); Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

Both the Ninth Circuit and district court acted as *prosecutors* of Kinney, not as neutral arbitrators of disputes, when they dismissed his FTCA case and appeal; and violated his federal constitutional and civil rights, the "honest services" law, and the Hobbs Act. [App. A, 1; App. B, 3] Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir.

1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

The decisions were retaliation at a federal level [and see In re Kinney, 201 Cal.App.4th 951 (2011) and Kinney v. Clark, 12 Cal.App.5th 724 (2017) for examples of retaliation at the state level] to the detriment of Kinney, his FTCA case and appeal, his interstate businesses, and his real property.

The decisions eliminate Kinney's Constitutional rights, restrict his fair access to the courts, and retaliate against him. Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986); United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" including a right to a review by appeal (which is being routinely denied to Kinney in federal courts by the use of overbroad vexatious litigant pre-filing orders). That First Amendment Right is "one of the most precious of the liberties safeguarded by the Bill of Rights". BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)].

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in appellate courts, which chill or penalize the exercise of First Amendment rights, and act to

limit direct review by a higher court. "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense." NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

Fundamental to the Fourteenth Amendment's right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914). That was not allowed in this case and appeal.

When a person is deprived of his rights in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 86-87 (1988).

Procedures which adversely affect access to the appellate review process require close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956).

An appeal cannot be granted to some FTCA litigants and capriciously or arbitrarily denied to others without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961).

Certiorari should be granted to provide guidance on the method and manner in which the federal

courts apply, restrict, or summarily deny the right of access to the courts by a FTCA plaintiff, or compel silence on *pro se* FTCA litigants.

As to the acts by the Ninth Circuit and US District Court in this FTCA case, an appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. “A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955); 28 U.S.C. Sec. 455.

While claims of bias generally are resolved by common law, statute, or professional standards of the bench and bar, the Due Process Clause of the Fourteenth Amendment “establishes a constitutional floor.” Bracy v. Gramley, 520 U.S. 899, 904 (1997). That was not done in this case.

This Court has repeatedly held that due process requires recusal not only where there is proof that a judge is actually biased, but also where objective inquiry establishes a probability of bias. Caperton v. A. T. Massey Coal, Co., Inc., 129 S.Ct. 2252, 2259-2263, (2009); Tumey v. Ohio, 273 U.S. 510, 532 (1927); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986); Withrow v. Larkin, 421 U.S. 35, 47 (1975). That applies here.

The federal courts have ignored that “void” orders based on unconstitutional vexatious litigant laws, overbroad pre-filing orders, and blatantly incorrect assignments (to the wrong appellate court) cannot support dismissal decisions in a FTCA case. Sinochem Intl. Co. v. Malaysia Intl. Ship Corp., 549

U.S. 422, 430 (2007); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14, 19-23 (Cal. 2009).

Besides compelling silence on Kinney, these federal courts have ignored: (1) overbroad vexatious litigant pre-filing orders; (2) adverse impacts on Kinney's real property rights; (3) adverse impacts on Kinney's businesses (including his interstate commerce businesses); and (4) Kinney's right to be free from retaliation, all subject to review by federal courts who have the obligation to determine the issues and to follow the law. McCarthy v. Madigan, 503 U.S. 140, 146 (1992); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-818 (1976); Bosse v. Oklahoma, 580 U.S. ___, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016); Navarro v. Encino Motorcars, LLC, 845 F.3d 925, 926-928 (9th Cir. 2017). That was not done here by any measure when Kinney's amended FTCA appeal was not presented to the correct appellate court.

CONCLUSION

This Court should grant Kinney's petition. In the alternative, this Court should vacate the Ninth Circuit's dismissal decision [App. A, 1], and the US District Court should be instructed to send Kinney's amended FTCA appeal to the *correct* court, the US Court of Appeals for the Federal Circuit in Washington, DC.

Dated: Oct. 15, 2021

By: ___s/___ Charles Kinney_____
Charles Kinney, Petitioner in pro se