No. 21-6829

IN THE

SUPREME COURT OF THE UNITED STATES

Ibrahim Donmez - Petitioner

v.

NYC Department of Consumer Affairs, et al. - Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does the language of 28 U.S.C. § 1915 allow screening or dismissal of non-frivolous non-prisoner complaints and claims for failure to state a claim under 28 U.S.C. § 1915 (e) (2) (b) (ii) and seeking monetary relief against a defendant who is immune from such relief under 28 U.S.C. § 1915 (e) (2) (b) (iii) before service of process and defendants' answer? Was Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) overruled by The Prison Litigation Reform Act (PLRA) for non-prisoner complaints and claims?

2) Did Court of Appeals violate due process?

LIST OF PARTIES

1) Ibrahim Donmez, Petitioner
2) NYC Department of Consumer Affairs, Respondent
3) NYC Department of Parks and Recreation, Respondent
4) NYC Police Department, Respondent
5) NYC Office of Administrative Trials and Hearings, Respondent
6) NYS Department of Motor Vehicles, Respondent
7) NYC Parks Department Officer Asha Harris, Respondent
8) NYC Parks Department Officer Henderson, Respondent
9) NYC Police Department Officer Ocelin, Respondent
10) NYC Police Department Officer John Doe, Respondent
11) NYC Parks Department Officer John Doe, Respondent
12) NYC Deputy Counsel Sanford Cohen, Respondent
13) NYS Judge Charlotte Davidson, Respondent
14) The City of New York, Respondent
15) The State of New York, Respondent

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Court of Appeals Order Dismissing Petitioner's Appeal Sua Sponte (July 14, 2021) appears at Appendix A to the petition and is unpublished.

District Court Civil Judgment Dismissing Petitioner's Complaint in its Entirety (February 3, 2021) appears at Appendix F to the petition and is unpublished.

District Court Order Dismissing Petitioner's Complaint in its Entirety (January 28, 2021) appears at Appendix E to the petition and is unpublished.

District Court Order Denying Petitioner's Three Motions (January 7, 2021) appears at Appendix D to the petition and is unpublished.

District Court Order Denying Petitioner's Motion Requesting Modification of Order to Amend (November 6, 2020) appears at Appendix C to the petition and is unpublished.

District Court Order to Amend (October 5, 2020) appears at Appendix B to the petition and is unpublished.

District Court Civil Judgment Dismissing Petitioner's Complaint in its Entirety (December 16, 2016) appears at Appendix I to the petition and is unpublished.

District Court Order Dismissing Petitioner's Complaint in its Entirety (December 16, 2016) appears at Appendix H to the petition and is unpublished.

JURISDICTION

United States Court of Appeals decided petitioner's appeal on July 14, 2021. See Appendix A

A timely motion for reconsideration/reconsideration en banc was denied by the United States Court of Appeals on October 14, 2021. See Appendix G

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S. CODE § 1915 - PROCEEDINGS IN FORMA PAUPERIS:

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a) (2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S. CODE § 1915A SCREENING:

(a) Screening.—

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for Dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.—

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

UNITED STATES CONSTITUTION 14TH AMENDMENT § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This petition is petitioner's third petition filed with this Court.

Petitioner filed his complaint with the District Court for systematic due process deprivations and systematic judicial bias in New York City and New York State Courts only to be subjected to more systematic judicial bias and systematic due process deprivations by the Federal Judiciary.

The District Court has repeatedly dismissed petitioner's non-frivolous complaints, claims and motions before service and defendants' answer even though petitioner has never been a prisoner. See Appendix B, C, D, E, F, H and I

The District Court has repeatedly dismissed petitioner's non-frivolous complaints and claims without notice, without opportunity to be heard, without reading and without understanding petitioner's complaints and claims.

The District Court is blocking petitioner's access to courts only because petitioner is proceeding in forma pauperis and pro se status.

Court of Appeals did not allow petitioner to file a brief for his legal questions that merited review under the collateral order doctrine and Article III and dismissed petitioner's appeal sua sponte without giving petitioner notice and opportunity to be heard with a brief. See Appendix A

Court of Appeals did not review petitioner's legal questions even though petitioner presented law and conflict among circuit courts and incorrectly labeled petitioner's appeal frivolous without even giving petitioner notice and opportunity to be heard with a brief. See Appendix A, G, J, K, L, M

Petitioner filed his two petitions with this Court in 2017 after New York Appellate Division, First Department subjected petitioner to bias and due process deprivations and did not review petitioner's constitutional questions. Court of Appeals for the Second Circuit has shown the same exact pattern. There is again no review. Both State and Federal Appellate Courts dismissed petitioner's cases, claims and arguments with one or two sentences, with no actual review and frivolous law. These appellate courts have demonstrated to the petitioner that only those who can afford attorneys can get legal reviews in courts or justice in this country.

REASONS FOR GRANTING THE PETITION

QUESTION I

DOES THE LANGUAGE OF 28 U.S.C. § 1915 ALLOW SCREENING OR DISMISSAL OF NON-FRIVOLOUS NON-PRISONER COMPLAINTS AND CLAIMS FOR FAILURE TO STATE A CLAIM UNDER 28 U.S.C. § 1915 (E) (2) (B) (II) AND SEEKING MONETARY RELIEF AGAINST A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF UNDER 28 U.S.C. § 1915 (E) (2) (B) (III) BEFORE SERVICE OF PROCESS AND DEFENDANTS' ANSWER? WAS NEITZKE V. WILLIAMS, 490 U.S. 319 (U.S. SUPREME COURT 1989) OVERRULED BY THE PRISON LITIGATION REFORM ACT (PLRA) FOR NON-PRISONER COMPLAINTS AND CLAIMS?

INTRA-CIRCUIT SPLIT

First Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Feeney v. Correctional Medical Services, Inc., 464 F.3d 158 (1st Circuit 2006)

Second Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021); see also Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002)

Third Circuit generally does not allow dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Norman Grayson v. Mayview State Hospital, 293 F.3d 103 (3rd Circuit 2002); see also In Re Burrell, No. 16-3215 (3rd Circuit 2016)

Fourth Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Michau v. Charleston County, 434 F.3d 725 (4th Circuit 2006); see also Trazell v. Arlington County, No. 19-2424 (4th Circuit 2020)

Fifth Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants'

answer. See Lowe v. Wellcare Health Plans INC., No. 09-11062 (5th Circuit 2010); see also Darlene C. Amrhein v. United States of America, No. 17-41017 (5th Circuit 2018)

Sixth Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See In re Prison Litigation Reform Act, 105 F.3d 1131 (6th Circuit 1997); see also McGore v. Wrigglesworth, 114 F.3d 601 (6th Circuit 1997)

Seventh Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Coleman v. Labor and Industry Review Commission of State of Wisconsin, No. 15-3254 (7th Circuit 2017); see also Luevano v. Wal-Mart Stores, Inc., 722 F.3d 1014 (7th Circuit 2013)

Eight Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Wilson v. Alma City Court, 371 F. App'x 708 (8th Circuit 2010)

Ninth Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Calhoun v. Stahl, 254 F.3d 845 (9th Circuit 2001); see also Barren v. Harrington, 152 F.3d 1193 (9th Circuit 1998) but in Dario Olivas v. State of Nevada Ex Rel. Department of Corrections, 856 F.3d 1281 (9th Circuit 2017), Ninth Circuit stated only prisoner complaints and claims can be screened pursuant to 28 U.S.C. § 1915A.

Tenth Circuit generally does not allow dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Eleventh Circuit generally allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons and defendants' answer. See Mehmood v. Guerra, No. 18-14212 (11th Circuit 2019); see also Nurse v. Sheraton Atlanta Hotel, No. 14-12202 (11th Circuit 2015)

Petitioner uses the word "generally" based on what he was able to find through his research. Petitioner might have missed some cases from some circuits.

JURISDICTION

Since 1) petitioner's non-frivolous complaints and claims were repeatedly subjected to screenings and dismissals for failure to state a claim before service and answer from the defendants 2) petitioner's non-frivolous amended complaint and claims will be subjected to screening and dismissal for failure to state a claim before service and answer from the defendants again, 3) petitioner claims the Second Circuit's interpretation of 28 U.S.C. § 1915 allowing screening and dismissal of non-prisoners' non-frivolous complaints and claims for failure to state a claim before service and defendants' answer is wrong and 4) this Court has never stated that non-prisoners' non-frivolous complaints and claims can be subjected to screening and dismissal for failure to state a claim before service and defendants' answer, petitioner claims the dispute is now a legal and live controversy that is bound to repeat, yet evading review. See Turner v. Rogers, 131 S.Ct. 2507 (U.S. Supreme Court 2011); see also Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Since 1) this question is a serious and unsettled legal question and 2) this Court has never stated that non-prisoners' non-frivolous forma pauperis complaints and claims can be screened and dismissed for failure to state a claim before service and defendants' answer, the review is warranted under the collateral order doctrine stated in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (U.S. Supreme Court 1949). See Nixon v. Fitzgerald, 457 U.S. 731 (U.S. Supreme Court 1982)

PRISON LITIGATION REFORM ACT

This Court should consider what Congress was trying to solve with the Prison Litigation Reform Act. The Court should evaluate the legislative history to determine Congress' primary concern (prisoner litigations) in enacting the amendments to Section 1915 and refuse to adopt an interpretation that would bring about an end completely at variance with the purpose of these amendments. See Steelworkers v. Weber, 443 US 193 (U.S. Supreme Court 1979)

This Court should then ask whether the suggested interpretation fits into that purpose. Appellate courts' particular interpretation (including the Second Circuit's) undermines the purpose of PLRA by imposing liability on non-prisoners. See Freeman v. Quicken Loans, 566 U.S. 624 (U.S. Supreme Court 2012)

The Prison Litigation Reform Act (PLRA) was enacted in April 1996 to address the large number of prisoner complaints filed in federal courts, not to block non-prisoner pauper plaintiffs' meaningful access to courts.

The purpose of the PLRA, as reflected by its title, is to curtail prisoner litigation. See H.R. Rep. No. 104-378, at 166 (1995) (the prison litigation reforms are intended to "discourage frivolous and abusive prison lawsuits").

Courts may consider statutory declarations of purpose as well as the broad functioning of the statutory scheme. Courts may consider statutory declaration of purpose and evaluating "various Titles of the Act" as "the tools through which this goal is to be accomplished". See United States v. Turkette, 452 US 576 (U.S. Supreme Court 1981)

PLRA intended to "reduce the quantity and improve the quality of prisoner suits" See Jones v. Bock, 127 S.Ct. 910 (U.S. Supreme Court 2007) quoting Porter v. Nussle, 534 U.S. 516 (U.S. Supreme Court 2002)

"There was no evidence in the legislative history that Congress intended to change the dismissal procedures for non-prisoner indigent plaintiffs" See Norman Grayson v. Mayview State Hospital, 293 F.3d 103 (3rd Circuit 2002)

This Court should review the legislative history, including drafting history and committee reports, to determine the purpose of Section 1915, and review the PLRA amendments' purpose in the light of the statutory context. See Howard Delivery Service, Inc. v. Zurich American Ins. Co., 547 US 651 (U.S. Supreme Court 2006)

Petitioner has read the legislative history of Prison Litigation Reform Act through the 58 congressional documents available at:
http://www.law.umich.edu/facultyhome/margoschlanger/Pages/PrisonLitigationReformActLegislativeHistory.aspx

There is no evidence that suggests that Congress intended that non-frivolous non-prisoner forma pauperis complaints and claims can be screened or dismissed for failure to state a claim before service and defendants' answer.

On the contrary, legislative history demonstrates that every single word and every single sentence that were amended to Section 1915 were intended for prisoners.

"The volume of prisoner litigation represents a large burden on the judicial system, which is already overburdened by increases in nonprisoner litigation. Yet prisoners have very little incentive not to file nonmeritorious lawsuits. Unlike other prospective litigants who seek poor person status, prisoners have all the necessities of life supplied, including the materials required to bring their lawsuits. For a prisoner who qualifies for poor person status, there is no cost to bring a suit and, therefore, no incentive to limit suits to cases that have some chance of success." See May 25, 1995 Congressional Record - Senate available at *http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/17_Congressional_Record.pdf*

It is obvious that even though Congress complained about non-prisoner litigation, the Prison Litigation Reform Act was intended only for the prisoners.

Committee report, like the Senate Report petitioner stated above, are a particularly reliable source to which this Court can look to ensure Congress' intended meaning. See Digital Realty Trust, Inc. v. Somers, 138 S. Ct. 767 (U.S. Supreme Court 2018)

"Section 804 amends 28 U.S.C. 1915 to require the prisoner to list all assets when filing in forma pauperis suits. Section 805 adds a new section 1915A to 28 U.S.C. to require early judicial screening and prompt dismissal of clearly meritless suits against governmental entities or employees." See December 1, 1995 House of Representatives Conference Report available at: *http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/31_Conference_Report.pdf*

"JUDICIAL SCREENING Another provision of the Prison Litigation Reform Act would require judicial screening before docketing, of any civil complaint filed by a prisoner seeking relief from the Government under section 1983 of title 42, a reconstruction-era statute that permits actions against State officials who deprive "any citizen of the United States of the rights, privileges, or immunities guaranteed by the constitution." This provision would allow a Federal judge to immediately dismiss a complaint under section 1983 if either of two conditions is met: First, the complaint does not state a claim upon which relief may be granted. or second, the defendant is immune from suit." See May 25, 1995 Congressional Record - Senate available at: *http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/17_Congressional_Record.pdf*

Although reliance on legislative history is unnecessary in light of the statute's unambiguous language in regards to the fact that pre-service judicial screening for failure to state a claim only applies to prisoner cases, this Court can note the support that legislative history provides for petitioner's reading from these records. See Milavetz, Gallop & Milavetz, PA v. US, 130 S.Ct. 1324 (U.S. Supreme Court 2010)

PRISONER v. NON-PRISONER

Non-prisoners face significantly greater challenges than prisoners when initiating a lawsuit. See Johnson v. Daley, 339 F.3d 582 (7th Circuit 2003)

Eighth Amendment requires prisons to provide humane conditions of confinement and ensures that prisoners receive adequate food, clothing, shelter, and medical care. Non-prisoners "have to choose between necessities like toothbrushes and a lawsuit.", "prisoners need not make this choice." See Siluk v. Merwin, 783 F.3d 421 (3rd Circuit 2015)

NEITZKE V. WILLIAMS, 490 U.S. 319 (U.S. SUPREME COURT 1989)

On February 27, 2021, Professor George Rutherglen, who argued the case for Harry Williams, Sr. in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) stated to the petitioner over an email that Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) "was not directly overruled by the amendments to section 1915".

Congress has not overruled Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for non-prisoner cases.

Congress has overruled Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for only prisoner cases with the screening requirements stated only in 28 U.S.C. § 1915A.

Although 28 U.S.C. § 1915, as amended in 1996, does not explicitly authorize pre-answer screening to decide whether a non-prisoner complaint is "frivolous or malicious," such pre-answer screening has long been part of the in forma pauperis process for prisoner and non-prisoner cases alike. See Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (applying 28 U.S.C. § 1915(d) before the 1996 amendments). It appears that former 28 U.S.C. §

1915(d), which Neitzke interpreted, was redesignated (and amended) as 28 U.S.C. § 1915(e). See Historical and Statutory Notes, 28 U.S.C.A. § 1915 (West Supp.1997) (Pub.L.104-134, § 101[(a)] [§ 804(a)(2)], redesignated former subsection (d) as (e)). It is, therefore, impossible to believe that Congress intended to limit the practice of preanswer "frivolous and malicious" screening to prisoner cases because of the 1996 amendments. 28 U.S.C. § 1915 (e) (2) (b) (i) authorizes pre-answer screening of non-prisoner in forma pauperis complaints for the purpose of deciding whether the complaint is frivolous or malicious. See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

Congress did not bark. There is nothing in PLRA's legislative history that mentions or discusses Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989). Common sense suggests that Congress would have mentioned or discussed the kind of effect that PLRA would have on non-prisoner forma pauperis cases in the way the Second Circuit suggests if the Congress had really intended to change this Court's interpretation. See Church of Scientology of California v. IRS, 484 U.S. 9 (U.S. Supreme Court 1987)

No members of Congress expressed the view that the statutory language was intended to overrule Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) for non-prisoner cases. See Zuni Public School District v. Department of Education, 127 S.Ct. 1534 (U.S. Supreme Court 2007)

Congress does not create discontinuities in legal rights and obligations without some clear statements. "Under established canons of statutory construction, it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." See Finley v. United States, 490 U.S. 545 (U.S. Supreme Court 1989)

"A party contending that legislative action changed settled law has the burden of showing that the legislature intended such a change." See Green v. Bock Laundry Machine Co., 490 U.S. 504 (U.S. Supreme Court 1989). None of these appellate courts, including the Second Circuit, met the burden of showing that Congress intended to overrule Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) for non-prisoner cases.

"In adopting the language used in the earlier act, Congress must be considered to have adopted also the construction given by this Court to such

language, and made it a part of the enactment." See Shapiro v. United States, 335 U.S. 1 (U.S. Supreme Court 1948)

If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, they are to be understood according to that construction. See Scalia & Garner, supra note 532, at 322

TEXT & LAW

Judges use a variety of tools to help them interpret statutes, most frequently relying on five types of interpretive tools: 1) ordinary meaning, 2) statutory context, 3) canons of construction, 4) legislative history, and 5) evidence of the way a statute is implemented. Courts also rely on judicial precedent; that is, if another case has previously interpreted a particular statutory provision, a judge may afford that prior interpretation some significance. Second Circuit and other appellate courts' interpretation only seem to apply the ordinary meaning tool and seem to avoid all other interpretive tools and they ignore Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

It is petitioner's interpretation of the 28 U.S.C. § 1915 that the District Court cannot dismiss non-frivolous non-prisoner forma pauperis complaints and claims for failure to state a claim under 28 U.S.C. § 1915 (e) (2) (b) (ii) before service and defendants' answer.

It is petitioner's interpretation of the 28 U.S.C. § 1915 that the District Court cannot dismiss non-prisoner complaints and claims for seeking monetary relief against a defendant who is immune from such relief under 28 U.S.C. § 1915 (e) (2) (b) (iii) before service and defendants' answer especially after the plaintiff clearly states that he is not seeking monetary relief from such defendant.

It is petitioner's interpretation of the 28 U.S.C. § 1915 that the District Court can dismiss non-prisoner forma pauperis complaints and claims that are frivolous and malicious under 28 U.S.C. § 1915 (e) (2) (b) (i) before service and defendants' answer based on the inherent powers of the Federal Courts.

28 U.S.C. § 1915 does not authorize district courts to screen non-prisoner complaints. See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

There is no explicit authorization in 28 U.S.C. § 1915 which pertains to prisoners and non-prisoners alike, for the courts to conduct pre-answer screening for any purpose. See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

Pre-answer screening for Rule 12 (b) (6) purposes was limited to prisoner cases under 28 U.S.C. § 1915A, to prohibit the district courts from conducting an initial sua sponte review of a non-prisoner in forma pauperis complaint for the purposes of determining whether the complaint satisfies Federal Rules of Civil Procedure 12 (b) (6). Stated simply, sua sponte initial review for Rule 12 (b) (6) purposes is limited to prisoner cases pursuant to 28 U.S.C. § 1915A (a) & (b). See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

Limiting pre-answer screening for Rule 12 (b) (6) purposes to prisoner cases would be a sensible construction of the statutes. This is true because the only pre-answer "screening" explicitly required or permitted by either section 1915 or 1915A is for prisoner cases. Compare 28 U.S.C. § 1915 (e) (2) with 28 U.S.C. § 1915A (a) & (b). See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

When the court is confronted with a non-prisoner in forma pauperis complaint, District Courts are limited, in terms of sua sponte initial review, to deciding whether the non-prisoner in forma pauperis complaint is frivolous or malicious. If the complaint is frivolous or malicious, the district court should dismiss it out of hand. If, however, the complaint is not frivolous or malicious, the district court should order issuance and service of process. See Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997)

The word "screening" is used only in 28 U.S.C. § 1915A, not 28 U.S.C. § 1915. 28 U.S.C. § 1915A (a) compels federal courts to screen only prisoner complaints before service and defendants' answer.

28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) command the federal court to screen and dismiss only prisoner complaints "before docketing, if feasible or, in any event, as soon as practicable after docketing"

28 U.S.C. § 1915A (b) and 28 U.S.C. § 1915 (e) (2) use the same exact terminology for dismissal. Second Circuit keeps 28 U.S.C. § 1915 (e) (2) in

isolation however Second Circuit's isolated interpretation gets nullified by "the remainder of the statutory scheme" in 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) making it clear that pre-service dismissal procedures only apply to prisoner cases. See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365 (U.S. Supreme Court 1988)

Congress wrote 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) to capture the interpretation urged by the petitioner more clearly. 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) show that "Congress knew how to draft" its intent that pre-service dismissal procedures only applied to prisoners. See Chicago v. Environmental Defense Fund, 511 US 328 (U.S. Supreme Court 1994)

28 U.S.C. § 1915 (e) (2) does not obligate screening of non-prisoner complaints before 28 U.S.C. § 1915 (d) service and answer from defendants. There is no such language in 28 U.S.C. § 1915.

The word "at any time" in 28 U.S.C. § 1915 should not be interpreted as "at any time before service" because 1) Congress did not write the statue as "any time before service" 2) with 28 U.S.C. § 1915, Congress also commanded that Federal Courts help the non-prisoner pauper plaintiffs with service on the defendants which lead to adversary procedures. See 28 U.S.C. § 1915 (d)

Second Circuit's interpretation excludes the time frame after service and defendants' answer and literally inserts the words "before service" to the statue. A court cannot "insert convenient language to yield the court's preferred meaning" See Borden v. United States, 141 S. Ct. 1817 (U.S. Supreme Court 2021); see also Lomax v. Ortiz-Marquez, 140 S.Ct. 1721 (U.S. Supreme Court 2020)

Congress did not include any word in Section 1915 that might imply dismissal for failure to state a claim before service and defendants' answer. However, such language is included in Section 1915A. Courts generally read as meaningful "the exclusion of language from one statutory provision that is included in other provisions of the same statute." A familiar principle of statutory construction is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute. "`[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'" See Hamdan v. Rumsfeld, 548 US 557 (U.S. Supreme Court 2006)

Second Circuit's interpretation disables the functions of 28 U.S.C. § 1915 (d) and 28 U.S.C. § 1915A (a) and U.S.C. § 1915A (b). "[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." See Yates v. US, 135 S. Ct. 1074 (U.S. Supreme Court 2015)

Courts should "give effect, if possible, to every clause and word of a statute" so that "no clause is rendered 'superfluous, void, or insignificant.'" Second Circuit's interpretation renders 28 U.S.C. § 1915 (d) and 28 U.S.C. § 1915A (a) and U.S.C. § 1915A (b) insignificant, if not wholly superfluous. It is the Court's duty to give effect, if possible, to every clause and word of a statute. See Duncan v. Walker, 533 US 167 - Supreme Court 2001

This Court has long held that "`a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause'" is rendered "`superfluous, void, or insignificant.'" See Young v. United Parcel Service, Inc., 135 S. Ct. 1338 (U.S. Supreme Court 2015)

Second Circuit's interpretation gives the words "at any time" an unintended broad meaning and ignores the principle of noscitur a sociis — a word is known by the company it keeps — to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress. See Gustafson v. Alloyd Co., 513 US 561 (U.S. Supreme Court 1995)

To gather evidence of statutory meaning, the Court should turn to the rest of the statue and read the statue as a whole. The dismissal procedures prescribed in Section 1915 and Section 1915A differ in structure, purpose, and application. See Holder v. Hall, 512 US 874 (U.S. Supreme Court 1994)

A pure textualist approach by the 10th Circuit: The language of 28 U.S.C. § 1915 (e) (2) does not impose a duty to screen or review before service of summons. Instead, it requires a court to dismiss a case filed by an IFP litigant at any time the court determines that the action or appeal is frivolous or fails to state a claim on which relief may be granted. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Congress' intent that only prisoner complaints can be screened and dismissed for failure to state a claim before 28 U.S.C. § 1915 (d) service can be inferred from the fact that both 28 U.S.C. § 1915A (c) and 28 U.S.C. § 1915 (h)

define "prisoner" with the same exact words but the word "screening" was only used in 28 U.S.C. § 1915A (a).

This Court's role in appraising petitioner's reading of § 1915 is not to make policy, but to interpret a statute. Taking this approach, it is evident that the failure-to-state-a-claim standard of 28 U.S.C. § 1915 (e) (2) (b) (ii) and the frivolousness standard of 28 U.S.C. § 1915 (e) (2) (b) (i) were devised to serve distinctive goals. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Prompt screening may be a good thing and conserve the resources of defendants forced to respond to baseless lawsuits but the language of the present rule also provides needed flexibility, even if it sometimes requires defendants to respond to complaints that may soon be dismissed as without merit. The language simply does not require district courts to screen the merits of every claim that comes before them in an IFP case, and reading in such an extensive duty absent statutory language to that effect should be declined. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

There is no doubt that frivolous complaints and claims are subject to dismissal pursuant to the inherent authority of the court even when the filing fee has been paid. See Mallard v. District Court, 490 U.S. 296 (1989); see also Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362 (2nd Circuit 2000); see also Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Therefore, sua suponte dismissal of complaints and claims that are frivolous as defined in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) and Denton v. Hernandez, 504 U.S. 25 (U.S. Supreme Court 1992) before service of process is permitted.

A non-prisoner pauper's complaint and claims can be dismissed only when a paying litigant's complaint and claims can be dismissed. A non-prisoner pauper litigant deserves the basic minimal procedures which any paying non-prisoner litigant gets in federal court. See Coppedge v. United States, 369 U.S. 438 (U.S. Supreme Court 1962)

The hair splitting in Bell v. Hood, 327 U.S. 678 (U.S. Supreme Court 1946) is still a good model.

There were no adversary procedures whatsoever in both complaints filed by the petitioner in the district court. It is better to have the adversary procedures in

the district court before the case gets to the Court of Appeals. The "adversarial process crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case." See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

By pursuing dismissals before service and defendant's answer, "the district court is cast in the role of a proponent for the defense, rather than an independent entity." See Porter v. Fox, 99 F.3d 271 (8th Circuit 1996)

District Courts cannot conduct an initial review of non-prisoner pro se fee-paid complaints under Rule 12 (b) (6) before service of process and responsive pleadings. See Porter v. Fox, 99 F.3d 271 (8th Circuit 1996)

A district court may dismiss a non-prisoner pro se complaint under Rule 12 (b) (6) sua sponte but only after service of process but forma pauperis non-prisoner pro se complaints may be dismissed under 28 U.S.C. § 1915 (e) (2) (b) (ii) before service of process. See Wilson v. Alma City Court, 371 F. App'x 708 (8th Circuit 2010)

Eight Circuit's rationale in Wilson v. Alma City Court, 371 F. App'x 708 (8th Circuit 2010) conflicts with Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) as District Courts cannot put indigent non-prisoner pro se plaintiffs on a different "footing with paying" non-prisoner pro se plaintiffs. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

The purpose of service of process stated in 28 U.S.C. § 1915 (d) is that the parties, not the court, would litigate the issues, and that these cases would proceed in the ordinary manner. The Federal Rules of Civil Procedure contemplates a litigant directed process at the initial stages, but the procedures that petitioner repeatedly gets subjected to (with the incorrect interpretation of 28 U.S.C. § 1915) interject review by judicial officers into the process. This judicial intervention places the judicial officers in the role of defense counsels, plaintiff's counsels, and judges, and deprives petitioner of the "considerable benefits of the adversary proceedings contemplated by the Federal Rules." See Hake v. Clarke, 91 F.3d 1129 (8th Circuit 1996) quoting Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Standards of frivolousness and failure to state a claim should not be conflated. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) quoting Haines v.Kerner, 404 U.S. 519 (U.S. Supreme Court 1972)

28 U.S.C. § 1915 and 28 U.S.C. § 1915A should be interpreted as a whole, not in a piecemeal or isolated manner. See United States v. Morton, 467 U.S. 822 (U.S. Supreme Court1984); see also K Mart Corp. v. Cartier, Inc., 486 U.S. 281 (U.S. Supreme Court 1988);

The provisions of a text should be interpreted in a way that renders them compatible, not contradictory. Courts should avoid interpreting a provision in a way that is inconsistent with the overall structure of the statute or with another provision or with a subsequent amendment to the statute or with another statute enacted by a Congress. Petitioner's reading "accords more coherence" to 28 U.S.C. § 1915 and 28 U.S.C. § 1915A and Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989). See Lindh v. Murphy, 521 U.S. 320 (U.S. Supreme Court 1997)

Statutes should be construed in a manner which will not create a hardship or injustice (see McKinney's Cons Laws of NY, Book 1, Statutes § 146). Meaning and effect must be given to all of the statute's language, and words are not to be rejected as superfluous when it is practicable to give each a distinct and separate meaning (see McKinney's Cons Laws of NY, Book 1, Statutes § 231).

Second Circuit's interpretation of 28 U.S.C. § 1915 (e) (2) that commands the dismissal of non-prisoner forma pauperis complaints and claims for failure to state a claim before service and defendants' answer renders 28 U.S.C. § 1915A (a), 28 U.S.C. § 1915A (b) and 28 U.S.C. § 1915 (d) superfluous and this creates serious conflict with 1) the text of the statues 2) Federal Rules of Civil Procedures, 3) the legislative intent and 4) Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Petitioner invokes Rule 10 (a) of this Court for his first question as "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter".

Petitioner also invokes Rule 10 (c) of this Court for his first question as "United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court" and Court of Appeals "has decided an important federal question in a way that conflicts with" Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989).

QUESTION II

DID COURT OF APPEALS VIOLATE DUE PROCESS?

"Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God." See 28 U.S.C. § 453

A fundamental requirement of due process is the opportunity to be heard. It is an opportunity which must be granted in a meaningful manner. See Armstrong v. Manzo, 380 U.S. 545 (U.S. Supreme Court 1965)

Court of Appeals did not respond to or review petitioner's appeal and legal questions.

Court of Appeals subjected petitioner to the same pattern to that of New York Appellate Division, First Department: no review and one-two sentence dismissals with frivolous law.

Court of Appeals went one step further and called petitioner's appeal frivolous by citing this Court's precedent in a manner that goes against the definition of frivolous established by this Court.

There was nothing frivolous about petitioner's appeal:

Petitioner presented conflict among circuit courts.

District Court Justice Louis L. Stanton subjected petitioner to harassment by issuing all of his orders and dismissals without reading petitioner's complaint.

District Court Justice Louis L. Stanton illegally forced petitioner to limit his amended complaint to 20 pages in the absence of jurisdiction.

It is a routine practice for attorneys to request appellate courts to assign their cases to a different judge.

There was no response to these legal questions and requests.

When petitioner brought these issues to the attention of the Court of Appeals, the Court of Appeals' response was that petitioner's claims were frivolous.

What was in fact frivolous was that both the District Court and the Court of Appeals subjected petitioner to bias and due process deprivations.

Petitioner has read hundreds of decisions and noticed that there is a clear pattern of bias against pro se litigants.

If a pro se litigant can file a 20 page motion filled with facts and law, the review of the Court should be at least 2 pages, not one or two sentences. Petitioner is unable understand what part of his presentation is frivolous with such a short response that lacks content. Petitioner feels that he is systematically subjected to bias and prejudice only because of his forma pauperis and pro se status.

If a pro se litigant cites to this Court's precedents, the District Court and Court of Appeals should not label petitioner's complaints, claims, motions and appeals frivolous without explaining their reasoning. Without explanation, there can be no understanding and trust in the judicial system.

Court of Appeals did not give petitioner ample opportunity to address the issues by filing a brief. Court of Appeals acted with impropriety in refusing to accept legitimate questions of law. See United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc., 508 US 439 (U.S. Supreme Court 1993)

Court of Appeals should have notified petitioner about its intent of dismissing petitioner's appeal and should have asked petitioner to file a brief. See United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc., 508 US 439 (U.S. Supreme Court 1993)

It is true that a court may act sua sponte on an issue "antecedent to . . . and ultimately dispositive of" the dispute before it, even an issue the parties fail to identify and brief. See United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc., 508 US 439 (U.S. Supreme Court 1993)

However, the Gorilla Rule is justified only when "injustice might otherwise result." See Singleton v. Wulff, 428 US 106 (U.S. Supreme Court 1976)

This is not such a case. The issue of page limitations was a collateral issue that merited review by the Court of Appeals. Court of Appeals ignored the law and this Court's precedents as the New York Appellate Division, First Department also ignored the law and this Court's precedents.

To make the case adversarial, Court of Appeals could have invited or ordered Justice Louis L. Stanton to address the judicial misconduct allegations against him pursuant to Federal Rules of Appellate Procedure Rule 21(b) (4) but instead Court of Appeals ignored these issues and labeled petitioner's claims frivolous.

Sua sponte dismissals without notice and proper procedures providing opportunity to hear conflict with the adversarial system principles deprives the losing party of the opportunity to present arguments against dismissal and tends to transform the Court into a proponent for defense rather than an independent entity.

"Judicial predictions about the outcome of hypothesized litigation cannot substitute for the actual opportunity to defend that due process affords every party against whom a claim is stated." See Nelson v. Adams USA, Inc., 529 U.S. 460 (U.S. Supreme Court 2000)

The fundamental core of due process is that a party should have notice and a meaningful opportunity to be heard before a claim is decided. See Nelson v. Adams USA, Inc., 529 U.S. 460, 465–68 (U.S. Supreme Court 2000)

The adversarial system is based on the premise that allowing the parties to address the court on the decisive issue increases the accuracy of the decision. In addition, it increases the parties' sense that the court's process and result are fair. See Singleton v. Wulff, 428 U.S. 106, 120 (1976); see also infra notes 54–58 and accompanying text.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a pro se litigant's rights." See Greenlaw v. US, 554 US 237 (U.S. Supreme Court 2008)

What Court of Appeals did was harm a pro se litigant.

The question is whether petitioner "has been accorded due process in the primary sense, — whether it has had an opportunity to present its case and be heard in its support." See Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673 (U.S. Supreme Court 1930)

The answer is no. Court of Appeals deprived petitioner of an ample opportunity to file a brief with specific facts and then dismissed petitioner's appeal with no evidence of an actual review.

This Court can see that petitioner can do a more substantive presentation of law when given ample opportunity. Court of Appeals blindsided petitioner with its arbitrary sua sponte dismissal.

The fact that petitioner was able to file a motion for reconsideration with forced limited number of pages within forced limited amount of time does not justify Court of Appeals' arbitrary deviation from the norm.

Petitioner invokes Rule 10 (a) of this Court for his second question as Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings" and petitioner calls "for an exercise of this Court's supervisory power."

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

January 6, 2022
Tampa, Florida

Respectfully submitted,

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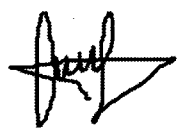

By: _____
IBRAHIM DONMEZ