

APR 22 2022

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No.

21-7711

IN THE

SUPREME COURT OF THE UNITED STATES

BRENDA JOYCE HAYNES PROSE PETITIONER
(Your Name)

vs.

LESLIE G. POSCHIO, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRENDA JOYCE HAYNES, PROSC
(Your Name)

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ORIGINAL

(10)

QUESTION(S) PRESENTED

- I WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER ?

- II WHETHER THE UNITED STATES COURT OF APPEALS (FOR THE SECOND CIRCUIT) HAS SANCTIONED DISTRICT COURT'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER(S)?

LIST OF PARTIES

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

RELATED CASES

THERE ARE NO RELATED CASES.

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- (5) (COA 6th Cir) *Tingler v Marshall*, 716 F2d, 1109 . . . 5, 6
- (6) *Haines v. Kerner ET AL.* 404 U.S. 519 (1972) . . . 5
- (7) *Conley v Gibson* 355 U.S. 41, 45-46 (1944) . . . 5

STATUTES AND RULES

RULE ESTABLISHED IN "Tingler" Court using its supervisory power [WE] hold . . . that a District Court faced with a complaint which it believes may be subject to dismissal must; (1) allow service of the complaint upon the defendant (2) Notify all parties of its intent to dismiss the complaint; (3) Give the plaintiff a chance to either amend his complaint or Respond to the reasons stated by the district court in its notice intended sua sponte dismissal (4) Give the defendant a chance to respond or file an answer or motions; (5) and, if the claim is dismissed, state its reasons for the dismissal. 6

CHIEF JUDGE, Clark's "Rule" established in the case of *Dioguardi v. Durning*, is in effect [4] is condemnation of premature dismissal based solely on the words in the pleading. . . . 5

Rule established in *Franklin v State of Oregon* [5] such sua sponte dismissals are not in accordance with our traditional adversarial system of justice because they cast the district court in the role of a proponent rather than an independent entity. . . . 6

STATUTE 28
~~Rule~~ USCS § 1915 . . . 7

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

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

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

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

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 14th 2022

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th AMENDMENT.

NO PERSON SHALL BE DEPRIVED OF
LIFE, LIBERTY, OR PROPERTY, WITHOUT
DUE PROCESS OF LAW 5.

28 USCS § 1915 7

STATEMENT OF THE CASE

THE NATURE OF THIS CASE CONCERNS ITSELF WITH A UNITED STATES COURT OF APPEALS (2nd Cir) WHICH HAS ENTERED A DECISION ON AN IMPORTANT QUESTION OF LAW, WHICH IS IN CONFLICT WITH OTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT QUESTION, AND WHICH, HAS ALSO, SANCTIONED THE DEPARTURE OF DISTRICT COURT FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURE, AS TO CALL FOR EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

- (1) ON DECEMBER 14th, 2020, PLAINTIFF APPELLANT filed a BIVENS Complaint, alleging that, Governmental Defendants, all acting under color of law, without any jurisdiction in violation of her Fifth Amendment Right to, a fair trial, a day in court, and, a fair appeal.
- (2) ON JUNE 21st, 2021, U.S. District Court Judge (Lawrence J. VILARDO), ISSUED HIS SUI SPONTE, ORDER WHICH GRANTED THE PLAINTIFF APPELLANT'S APPLICATION IN FORMA PAUPERIS, AND THEN, DISMISSED HER "BIVENS" Complaint Against the Government Defendants, with prejudice, after erroneously finding that they are all immune from suit.
- (3) ON February 14th, 2022 the UNITED STATES COURT OF APPEALS FOR THE (2nd Cir) unconstitutionally sanctioned District Court For THE WESTERN DISTRICT OF NEW YORK'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURES MANDATED BY 28 USCS § 1915, and Federal policy.

REASONS FOR GRANTING THE PETITION

1. Whether District Court's sua sponte dismissal of the plaintiff's - appellant's "Bivin" complaint on the merits , prior to service of the complaint upon the defendant and without providing the opportunity to respond to district court's intentions to dismiss , is proper or not , creates a very important federal question.

2. What makes the above mentioned sua sponte dismissal of plaintiff - appellant's "Biven" compliant , on the merit , such an important question , is that it concerns itself with the 5th Amendment to the U.S. Constitution as it applies to a very large segment of the U.S. population i.e. any and everyone who for no fault of their own are forced by providence or circumstance to pursue the redress of their civil or criminal complaints in the federal court system , as an , IFP , pro se litigant , these are the people who would be negatively impacted if the judicial ruling complained of in this matter were left to stand , not to mention , the confusion that such a contradictory ruling would undoubtedly cause among the various COA's in the federal circuit courts on this highly controversial issue of sua sponte dismissals on the merits by district court as a proponent as opposed to being an independent detached entity , where the defendants were by the actions of the district court prevented from receiving their constitutional right , to notice of the complaints against them or any opportunity to respond to or participate in the matter violates the defendant as was the plaintiff.

3. In times past this court's opinion on such a question was expressed in Haines v. Kerner ET AL. "404 U.S. 519 (1972) , which was, , We cannot say with assurance that under the allegations of the pro se complaint , which we hold to less stringent standards than formal pleadings drafted by lawyers , it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief ". Conley v. Gibson , 355 U.S. 41 , 45 - 46 (1944) see Dioguardi v. Durning , 139 F. 2d 774 (CA2 1944)

Accordingly , although we intimate no view whatsoever on the merits of the petitioner's allegations , we conclude that he is entitled to an opportunity to offer proof .

4. In more recent times the COA 2d Cir . , in the Case of " LEWIS V. STATE of NEW YORK , 547 resulted in the following ruling on the same question :

" More than a quarter century ago , Judge , later Chief Judge , Clark cautioned against " judicial hast which in the long run makes waste ". Dioguardi v. Durning , 139 F. 2d 774 , 775 (2d Cir. 1944) . His condemnation of premature dismissals Based solely on the words in the pleadings applies with added force when the action is terminated prior to process on the opposing party."

5. Likewise the COA 6th Cir. , in the case of , (TINGLER v. MARSHALL , 716 F.2d , 1109) , recognized the identical issue , as in this case , and went on to find the following :

REASONS FOR GRANTING THE PETITION

5. " the narrow issue which we address involves sua sponte dismissals on the merits, prior to service of the complaint and without notice of the proposed dismissal to the plaintiff to allow him to respond.

Such sua sponte dismissals are not in accordance with our traditional adversarial system of justice because they cast the district court in the role of " a proponent rather than an independent entity " Franklin v. State of Oregon, State Welfare Division 662 F.2d 1337, 1342 (9th Cir. 1981). Moreover, such dismissals are not favored because they are unfair to the litigants and ultimately waste, rather than save judicial resources. Id Lewis v. State of New York, 547 F.2d 4 (2d Cir 1976).

Plaintiffs are prejudiced by the procedure followed by district court in this case , because, unlike with motions to dismiss filed by defendants, they have no opportunity to Amend their complaints or make legal arguments against the dismissal. The prejudice is particularly acute with respect to pro se plaintiffs, like the plaintiff in this case, who are generally unskilled in the art of pleading.

If the defendants do not participate the court of appeals is Faced with an appeal in which only the appellant participates. Such an occurrence hampers the court's ability to make A reasoned decision because there is no adversarial presentation.

6. Finally the COA 6th Cir. in the mentioned above "TINGLER" , used its supervisory power to find the following ;

WE hold that a district court faced with a complaint which it believes may be subject to dismissal must :

- 1) Allow service of the complaint upon the defendant :
- 2) Notify all parties of its intent to dismiss the complaint :
- 3) Give the plaintiff a chance to either amend his complaint or respond to the reasons stated by the district court in its notice intended sua sponte dismissal :
- 4) Give the defendant a chance to respond or file an answer or motion :
- 5) and , if the claim is dismissed, state its reasons for the dismissal.

7. Where the record of the proceedings below reveal that the district court omitted all but one of the mandated actions outlined by the COA 6th Cir. in their Supervisory Power it is as a

REASONS FOR GRANTING THE PETITION

matter of constitutional law and a need for uniformity among all the U.S.C.O.A. 's that this court should likewise exercise its Supervisory Power and grant the petitioner's petition.

8. Another reason for this court to grant this petition is that the U.S. C.O.A. (2d Cir.) has sanctioned the departure of district court from the accepted and usual course of judicial proceedings by its affirmation of district court's violation of 28 USC 1915

9. The Fifth Circuit Discusses Appellate Review of dismissals under 28 USC 1915 in the case of *Humphries v. Various Federal Usins Employees* 164 F. 3d, the court made the following findings:

Dismissals under 28 USC 1915 (e) (2) (B) are governed by abuse of discretion standard at 940 : " In determining whether a district court abuses its discretion, we consider factors such as whether :

- 1) The plaintiff is proceeding pro se,
- 2) The court inappropriately resolved genuine issues of disputed fact,
- 3) The court applied erroneous legal conclusions,
- 4) The court has provided a statement of reasons which facilitates "intelligent" appellant review, and
- 5) Any factual frivolousness could have been remedied through a more specific pleading.

10. THE RECORD OF THE PROCEEDINGS BELOW INDICATE THAT COA (2d Cir.) WAS MADE AWARE BY PETITIONER'S APPEALS BRIEF OF THE FOLLOWING :

- 1) That the plaintiff - appellant is and has been proceeding below as a, non-prisoner, IFP, pro se litigant,
- 2) That In reaching the factual determinations, i.e. "Haynes asserts that Judge Foschio, Newmen, Parker, and Pooler "acted without jurisdiction". Docket item 1at 3. But Judges Foschio, Newman, Parker, and Pooler presided over the cases to which Haynes's complaint refers. See Docket item 1at2-3 '..." , district court inappropriately resolved jurisdiction by neglecting to consider as true plaintiff-appellant;s following allegations ;

(i) USDC WDNY (Foschio), acted without jurisdiction in violation of the "Doctrine" of "Law of the case" and the Rule of "Mandate" in order to unlawfully reinstate the now void judgment, order and jury verdict previously VACATED and REMANDED by U.S. COA 2d Cir,(appx #1 pārs.f)

(ii) ON 6/21/2019, the US COA 2d Cir., with a panel consisting of JON O. NEWMAN< ROSEMARY S. POOLER and BARRINGTON D. PARKER, acting without jurisdiction in violation of the "Doctrine" of "LAW OF THE CASE" and "PRIOR PANEL PRECEDENT RULE" in order to unlawfully affirm USDC WDNY 's unconstitutional reinstatement of a void judgment, order and jury verdict previously VACATED and REMANDED by a different and prior panel of the US COA 2d Cir. (appx # 1 par. h) ;

11. THAT the legal conclusions reached by district court in support of its sua sponte dismissal Of plaintiff- appellant's "Bivens" complaint , i.e. ;

(i) IN fact, the complaint seeks relief based precisely on the judges decisions iover which they presided, Stated more simply, the compliant vary plainly seeks relief based on decisions rendered by judges action as judges, and : (appx 2 pg. 6)

(ii) Just as plainly, those judges are immune from suit.....(appx 2 pg 6)

THAT the above mentioned conclusions of law are erroneous because the facts relied upon by district court in order to reach the above mentioned conclusions of law had previously been reached by district court in an inappropriate process (see par 2 of issue (ii) supra),and

The plaintiff- appellant herein asserted that the record of the proceedings below clearly established that the conclusions of law relied by district court in support of its Sua sponte dismissal of Plaintiff-Appellant's "Bivens" complaint with prejudice, are erroneous because they Rely upon facts that were established inappropriately by district court instead of the unredacted and true facts alleged in plaintiff-appellant's "Bivens" complaint, which under 28 USC 1915 , district court is obliged to deem as true instead of omitting them as was done below.(appx #1 pg 3 pars f&h) and (appx #2 pgs 4-6)

12. THE above mentioned information related to district court's deviation from the 28 USC 1915, the accepted and usual course of judicial proceedings , was made clear to the COA 2d Cir. complained of here , and that despite having this knowledge the COA 2d Cir. unconstitutionally sanctioned district court's depature.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brenda J. Haynes

Date: April 21st, 2022