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21-8010
No.

In the Supreme Court of the United States

**Louis Gonzalez, also known as Carlos Ramos Sanchez,
Petitioner,**

v.

**Magistrate Judge Elaine E. Bucklo, Clerk of the Court Thomas G. Bruton,
Unknown Court Reporter,
Respondents.**

*On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Seventh Circuit*

The Honorable, Frank H. Easterbrook & Thomas L. Kirsch II
Circuit Judges

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

1. Whether the Seventh Circuit, in not allowing Petitioner proceed *in forma pauperis* on appeal, adopted an opinion from the District Court that conflict with its earliest decision in *Lowe v. Letsinger*, and with decisions from other courts?
2. Where due process requires notice of judgment be given to the parties timely, can such failure to inform the Plaintiff timely, be found as a non-frivolous issue that the court of appeals failed to address?
3. Whether, as in the present case, such failure to give notice of judgment timely amount to a violation of Petitioner's constitutional rights, requiring redress from the judge and/or the clerk of the court?
4. Whether a *Bivens* claim may be permitted to proceed against the judge, the clerk of the court, and/or any other employee of the court?
5. Whether the PLRA apply to immigration detainees? —The Seventh Circuit and the Illinois District Courts, in evaluating and denying immigrant detainees to proceed *in forma pauperis*, apply PLRA rules that other district courts and appeal courts do not apply. See App. K.

II. List of Parties

All parties appear in the caption of the case on the cover page.

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- *Gonzalez v. Bucklo, et. al.*, No. 21-3106, U.S. Court of Appeals for the Seventh Circuit. Judgment entered on January 25, 2022.

¹ E, F, G, and H, refer to the Case No. 1:19-cv-05734 where Plaintiff was not informed timely.

VI. Petition for Writ of Certiorari

Louis Gonzalez, a/k/a Carlos Ramos Sanchez, an alien currently detained at LaSalle ICE Processing Center, located in 830 Pinehill Road, Jena, Louisiana, respectfully petitions this Court for a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals, and consequently the lower court's opinion.

VII. Opinions Below

On January 25, 2022, the Court of Appeals of the Seventh Circuit denied Petitioner leave to proceed *in forma pauperis* on appeal. A copy of that decision appears at Appendix (“App.”) A. The Justices Frank H. Easterbrook, and Thomas L. Kirsch II, of the Seventh Circuit, adopted the opinion and order from the District Judge Andrea R. Wood, which dismissed the complaint and denied Petitioner's motion to proceed *in forma pauperis* on appeal. Apps. B & C.

VIII. Jurisdiction

Petitioner invokes this Court's jurisdiction under 28 U.S.C.S. § 1254, having timely filed this petition for a writ of certiorari timely within ninety days of the Seventh Circuit Court of Appeals' judgment dated January 25, 2022. *See* App. A.

IX. Constitutional Provisions Involved

United Stated Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

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.

X. Statement of the Case

This case arises from a District Court's failure to give a timely notice of the court order and judgment to the Petitioner. Due Process Clause is directed at protection of individual, and he is entitled to its immunity as much against state as against national government. And where defendant has to appeal, it is particularly important, and due process required, that notice of judgment be given to defendant timely, since, judicial department of government is, in nature of things, necessarily governed in exercise of its functions by rule of due process of law.

This case present this Court with an opportunity to clarify whether a failure to inform a Plaintiff-Defendant timely—severing his right to appeal—amount to a violation of his Constitutional right. Also, whether the Judge or the Clerk of the Court, can be held liable under *Bivens* for such violation. Without the intervention of this Court the lower courts will continue to emit conflicting decisions.

1. The *Gonzalez v. Waukegan Police Department* lawsuit

In August 2019, Petitioner filed a lawsuit in the Northern District of Illinois against Waukegan Police Department, *Gonzalez v. Waukegan Police Department*, No. 19 C 5734 (N.D. Ill.) (Bucklo, J.), which on February 03, 2020, was dismissed for failure to state a claim and Petitioner was not informed about such order.

On February 21, 2020, having received nothing from the District Court, Petitioner wrote to the Court requesting information about the case.

On March 3, 2020, Petitioner received a one-page (App. F) response briefly indicating that the case had been "dismissed for failure to state a claim," and there was not a copy of the Court's order. Petitioner not being able to send the notice of appeal and motion for leave to proceed *in forma pauperis* based upon that, on March 12, 2020, he sought a copy of the dismissal order, because the single page just stated that the case had been dismissed, not giving any other information.

It must be noted that the page Petitioner received was not file-stamped, as if no judgment had been filed yet. *See Apps. F and G.* Also, the one-page that Petitioner received from the Court was outside already of the 30 days window permitted by the Court to send the notice of appeal. (Maybe the District Judge having a heavy case load was not able to file such judgment, or maybe the Judge assuming that the Petitioner was going to be deported did not file such judgment). The case *Gonzalez v. Waukegan Police Department*, No. 19 C 5734 is unpublished.

The letter that Petitioner sent on March 12, 2020, requesting complete information, the Court must have received it around March 17, 2020, and it was until April 20, 2020, when, as the Judge said, "the Court directed the Clerk of the Court to "send a copy of the February 3, 2020 order and judgment [] to Plaintiff at his address of record", and it was until May 05, 2020, that Petitioner received as the Judge said "another page much like the previous one he had received, except that [this time] it was file-stamped, and he also received a copy of the "judgment.""

Thus, it took three months to the District Court to send the court's order and judgment stating the reasons to dismiss the case.

On May 28, 2020, Petitioner filed in the District Court his notice of appeal, along with a motion to proceed *in forma pauperis* and the "PLRA Memorandum", which was denied by the District Court.

On June 09, 2020, Petitioner sought in the Court of Appeals leave to proceed *in forma pauperis*, and on December 14, 2020, the Seventh Circuit Court of Appeals dismissed the appeal for lack of jurisdiction, explaining that "Rule 4(a) of the Federal Rules of Appellate Procedure requires that notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed." *See* the decision at App. E.

2. The Present Case, *Gonzalez v. Bucklo, et. al.*

Due to such failure to inform the Petitioner timely, severing his right to appeal, on May 05, 2021, Petitioner filed a lawsuit, under the Fifth and Fourteenth Amendments, against Judge Bucklo, the Clerk of the Court Thomas Bruton, and an Unknown Court reporter, alleging violations of: (a) Denial of Procedural Due Process; (b) Right to Substantive Due Process; (c) Right of Access to the Courts; and (d) Denial of Equal Rights Under the Law.

On June 21, 2021, the District Judge, applying PLRA rules denied Petitioner leave to proceed *in forma pauperis* on the lawsuit, but after considering Petitioner's explanation of the reasons for his accumulation of funds, on September 24, 2021, the Judge let him proceed *in forma pauperis*, but ordered Petitioner's complaint to

be dismissed pursuant 28 U.S.C. § 1915(e)(2), as frivolous, for lack of subject-matter jurisdiction, and for failure to state a claim on which relief may be granted. App. C.

On November 02, 2021, Petitioner filed in the District Court a notice of appeal and an application to proceed *in forma pauperis* on appeal. The Court applying PLRA rules again, on November 19, 2021, denied him to proceed *in forma pauperis*, alleging that the appeal was not taken in good faith. App. at B-1. On December 08, 2021, Petitioner sought in the Seventh Circuit, leave to proceed *in forma pauperis* on appeal, which was denied on January 25, 2022. App. A.

XI. REASONS FOR GRANTING THE WRIT

A. To avoid erroneous interpretation of the law this Court should resolve the conflicting interpretation given by different courts of appeals, and district courts, to: (1) the law referent to judicial immunity covering judges and employees of the court; (2) whether a *Bivens* action may be permitted to proceed against a judge, a clerk, or any other employee of the court; (3) whether as in the present case, failure to give notice of the judgment timely, amount to a violation of a constitutional right, requiring redress from the judge and/or the clerk; and (4) resolve the inconsistency between courts about if the PLRA rules apply to alien detainees.

The Seventh Circuit in denying Petitioner's motion to proceed *in forma pauperis* asserted: "The appellant has not identified a good faith issue that the district court erred in dismissing his complaint." App. at A-1. But in *Ellis v. United States*, the Court found that "in the absence of evident improper motive, the applicant's good faith is established by the presentation of any issue that is not plainly frivolous." This case presents a violation of a Constitutional right—of due process—by the failure of a District Court to give notice of the judgment timely, which is an issue that cannot necessarily be characterized as frivolous.

The District Judge also in her order to dismiss, asserted that "Gonzalez's failure to receive an order more quickly [] is not enough even to hint an actionable misconduct by any named Defendant." App. at C-4. But other courts have opined differently, finding that Due Process Clause requires prompt notice of judgment be given to the defendant. *See e.g.*, District Court of Maryland, Civil Action No. DKC 15-1931 January 5, 2018, "[t]his court issued a memorandum opinion [] entering judgment against Plaintiff . . . Copies were mailed to Plaintiff the same day." *Also*, "[w]here defendant has [] to appeal, it is particularly important, and *due process required*, that notice of judgment be given to defendant or his right to appeal would have been abridged severely." *Hume v. Small Claims Court* . (Emphasis added).

Thus, it is well known that "Judicial department of government is, in nature of things, necessarily governed in exercise of its functions by rule of due process of law." *Hovey v. Elliott*; also that "[d]ue process clauses of both Fifth and Fourteenth Amendments are directed at protection of individual, and he is entitled to their immunity as much against state as against national government." *Curry v. McCanless*. Also, "Due Process has to do with the denial of that fundamental fairness, []." *Kinsella v. United States*; also "[t]ouchstone of due process is protection of individual against arbitrary action of government." *Wolff v. McDonnell*. Also, "Due Process requires that there be opportunity to present every available defense, []." *George Moore Ice Cream Co. v. Rose*.

In her first reason given by the District Judge to dismiss Plaintiff's complaint she asserted that "the Judge (and likely some judicial employees as well) would be

absolutely immune from a lawsuit seeking damages related to judicial conduct." App. at C-5. The Judge cited *Dawson v. Newman* at 660-61, which stated that ("The doctrine of judicial immunity . . . confers complete immunity from suit" to a judge for "acts performed by the judge in the judge's judicial capacity."). App. at C-5.

But the issue in the present case is not about Judge Bucklo's ruling on the case which can be considered a judicial act. The issue is about the failure of the Court to inform the Plaintiff timely about its ruling, which several courts have considered a violation of the due process. And as this Court has noted, "judicial immunity only apply[es] to those functions related to the resolution of disputes between parties and to the adjudication of rights, and did not apply to purely administrative activities." *Antoine v. Byers & Anderson*. Thus, the action challenged by the Petitioner is not contemplated into a judicial capacity.

Also, in *Lowe v. Letsinger*, a 7th Cir. Case, the Court concluded, referring to the Judge, that "deciding when to decide a case, no less than deciding the case itself, is a judicial act for which a judge is absolute immune." The Court also concluded that "three-week delay in sending notice of the order granting postconviction relief was also immunized because although "ordinarily the mere mailing of the notice is a clerk's chore" that did not involve the exercise of discretion, *to the extent that the judge "did not undertake to control the disposition of his own order[.]* he was acting in his judicial role." *Id.* at 313. (Emphasis added).

Thus, although the judge in *Lowe* was entitled to absolute immunity, the Court Clerk was not; the Court concluded that "the clerk's duty to type and send

notice after entry of judgment is a non-discretionary, ministerial task." *Lowe* at 313; *see also Williams v. Wood*, (no absolute immunity for entering an order and notifying the parties); *McCray v. Maryland*, (no absolute immunity for filing papers); *Bedron v. Baran*, (making entries in a docket book is a ministerial task).

Thus, the Seventh Circuit adopted an opinion from the District Court that conflict with decisions from other courts of appeals and with its own earliest decisions in *Lowe v. Letsinger*, where the clerk of the court was held liable.

As the second reason given to dismiss, the Judge expressed being "unaware of any similar claim invoking *Bivens* [], that has been permitted to proceed against court employees for a detainee not receiving a court order under any similar circumstances," *citing Vega v. United States*. App. at C-5.

But for such instances, when a purported *Bivens* claim is asserted in a new context, *Abbasi* requires "consideration of whether "special factors" counsel against inferring such a cause of action in the absence of "affirmative action by Congress" to create one." *Ziglar v. Abbasi*. As clarified by *Abbasi*, this "inquiry must concentrate on whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed." *Id.* at 1857-58. And the District Judge and the Seventh Circuit Judges failed to consider that in the present case "there is no alternative remedial structure present," the existence of that existing process "alone may limit the power of the Judiciary to infer a new *Bivens* cause of action." Also, that the present case does not have any special factor that may produce hesitation on the court in

providing the benefits sought, any relief will not imply interference with other branches of the government, nor will affect a national security nor international governmental relationship with other countries, nor a *Bivens* action will hinder the judges' ability in their judicial role in the resolution of disputes between parties .

Thus, the Seventh Circuit and the District Court failed to consider whether *Bivens* action may be inferred, whether "special factors" counsel against inferring a cause of action in the absence of "affirmative action by Congress" to create one, and that "there is no alternative remedial structure present."

As the third and last reason to dismiss, the District Judge asserted that "even assuming the existence of a *Bivens* remedy, [], no **facts** hint that the orders were not mailed (as opposed to some other cause of Gonzalez's non-receipt). Mere speculation that the order was not timely mailed is insufficient." App. at C-5. *Citing Bell Atl. Corp. v. Twombly*, (explaining that courts need not accept as true unsupported conclusions couched as factual allegations).

But in the present case, Petitioner has evidence that he did not receive such order: (a) there is Petitioner's mail records from Adams County Detention Center that shows that he did not receive a mail from the Court around such date (App. at H-5); (b) the Clerk mailed a single page, which was not file-stamped, showing that no judgment had been filed yet (App. F); (c) after Petitioner sent his second letter requesting a copy of the order, it took almost two months—from March 12, 2020, to May 05, 2020—to receive a response from the Clerk; and (d) such failure to inform the *pro se* plaintiffs is a pattern of conduct in the Illinois courts.

There exist a similar case, filed in the same District Court—now at the appeals court—where the same Plaintiff suffered the same violation, but this time by the State Appellate Court. In that other case, Petitioner was not informed timely about the Court's ruling, hampering too, his right to appeal. Two similar cases with the same Plaintiff strongly suggest a pattern of conduct in Illinois courts, Federal and State. The District Judge tried to differentiate such actions in the Illinois courts, by claiming that Petitioner's other similar case "involves unrelated state actors with no conceivable connection to the facts of this case." App. at C-5.

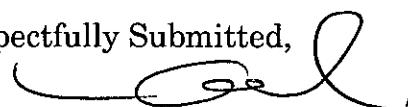
It is true that those are two different courts, one Federal and the other one a State Appellate Court, but if we consider the fact that those judges before becoming Federal or State judges had practiced in the Illinois' legal system, where similar violative actions are common, then it can be fair to assume that such behavior is a practice in the Illinois' legal system. *¹

XII. CONCLUSION

For the foregoing reasons, Petitioner respectfully request that this Court issue a writ of certiorari to review the judgment of the lower courts.

DATED this 20th day of April, 2022.

Respectfully Submitted,



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¹ Allegations for Illinois courts' application of PLRA Rules are included in Appendix K.