21-904

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES

♦

CHARLES G. KINNEY,
Petitioner,

v.

UNITED STATES OF AMERICA;
WALLACE; SILVERMAN; and
BYBEE,
Respondents.

♦

On Petition For Writ Of Certiorari To The
Ninth Circuit Court of Appeals (21-15941)

US District Court No. 3:21-mc-80104-JST
Northern District of California,
San Francisco [FTCA claim]

♦

PETITION and APPENDIX FOR A
WRIT OF CERTIORARI
[150 day statute of limitations]

♦

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QUESTIONS PRESENTED

Here, judges intentionally *abused* a "ministerial" act to conceal or cover-up that other judges had intentionally *abused* an "administrative" act to excessively punish petitioner. The improper acts ***don't provide*** "judicial" immunity for any judge.

The "ministerial" act was sending the appeal to the ***wrong*** court. The "administrative" act was creating a ***global*** vexatious litigant order.

This is similar to SCOTUS #21-668 (Judge Chen) but here a RICO element exists because Judges Wallace, Silverman, and Bybee acted together to punish petitioner based on "void" [on their face] 2008 and 2011 state vexatious litigant orders against "attorney" Kinney (who was not a party).

The "law enforcement proviso" exception to the FTCA's exclusion of intentional torts by federal law enforcement officers (acting within the scope of their employment) applies to "ministerial" or "administrative" acts made by a Judge as to an abuse of process or malicious prosecution of a judicial-corruption whistle-blower like Kinney who is asserting his US Constitutional rights.

The Ninth Circuit made a *not "narrowly tailored"* vexatious litigant pre-filing order on 1/19/18. Kinney's FTCA claim was denied. A complaint was filed. His complaint was dismissed *sua sponte* by Judge Tigar. His appeal was then sent to the ***wrong*** appellate court, and his appeal was dismissed *sua sponte* by the Ninth Circuit.

PARTIES TO THE PROCEEDINGS

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

TABLE OF CONTENTS

INDEX TO APPENDIX

Sequential No.
In Document
Page numbers at top of page:

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS, STATUTES, AND MISC

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. 21-15941 on 7/15/21 [NC Dk. #3; Appx. A, pg. 1] in which the Ninth Circuit (i.e. a ***"wrong" court***) dismissed Kinney's 5/24/21 FTCA appeal ***AND*** his 5/27/21 amended appeal [USDC Dk. #9; Appx. C, pg. 6 (first page)] to the US Court of Appeals for the Federal Circuit in Washington DC (i.e. the ***"correct" court).***

On 4/29/21, USDC Judge Jon S, Tigar dismissed Kinney's FTCA complaint *sua sponte* [USDC Dk #5; Appx. B, pg. 3] only two (2) days after that complaint was filed on 4/27/21 [USDC Dk #1].

The US District Court *refused* to forward Kinney's amended appeal to the ***correct appellate court.*** which is clearly an improper "ministerial" act.

Kinney's amended FTCA appeal was sent to the Ninth Circuit which *ignored that it had itself issued* the contested overbroad "administrative" (non-judicial) vexatious litigant pre-filing order.

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

The US District Court's "job" of forwarding the amended appeal to the correct appellate court is without question a "ministerial" (non-judicial) act even if performed by a judge.

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 (i.e. to the US Court of Appeals for the Federal Circuit that 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).

Each Ninth Circuit Judge (Wallace, Silverman, and Bybee in 2018; ***and*** Rawlinson, Callahan, and Vandyke in 2021) is a federal law enforcement officer, and had the power to execute searches, seize evidence and/or make arrests for violations of Federal law (e.g. contempt powers), so each Judge is subject to the FTCA's "law enforcement proviso" exception. 28 U.S.C. Sec. 2680(h).

Each of the first set of Ninth Circuit Judges, in the scope of his employment, did intentional acts against Kinney which constituted an abuse of process and/or malicious prosecution by issuing an overbroad vexatious litigant pre-filing order against Kinney (an "administrative" non-judicial

act). Likewise, each subsequent Ninth Circuit Judge (Rawlinson, Callahan and Vandyke) is also subject to the FTCA's "law enforcement proviso" exception for their improper "ministerial" acts.

The FTCA "law enforcement proviso" exception applies to the original Circuit Judges, USDC Judge Tigar; and Ninth Circuit Judges involved here.

The US waived sovereign immunity in regards to intentional torts by federal law enforcement officers who commit either abuse of process or malicious prosecution, and thus judges 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.

Individual federal judges can be enjoined from any further involvement with Kinney. 28 U.S.C. Sec. 2671; Ex Parte Young, 209 U.S. 123 (1908). Here, monetary damages are only available from the USA. Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978) [judge acted without subject matter jurisdiction to punish a non-party]; Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 735-736 (1980) [judges are "liable in their enforcement capacities", and subject to "declaratory or injunctive relief" for "their judicial acts"]; Forrester v. White, 484 U.S. 219, 228-230 (1988) [judge does not have absolute immunity for "administrative" or "ministerial" acts].

The original Ninth Circuit Judges, USDC Judge Tigar, ***and*** 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 and/or acting in a ministerial role. 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 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 1/19/18, Ninth Cir. Judges Wallace, Silverman and Bybee together 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 1/17/20, Kinney filed a FTCA claim against Ninth Cir. Judges Wallace, Silverman and Bybee.

On 10/28/20, Kinney's FTCA claim was denied by the Administrative Office of the US Counts.

On 4/27/21, Kinney filed a FTCA complaint in US District Court [USDC Dk #1]. 28 U.S.C. Sec. 1346.

On 4/29/21, USDC Judge Tigar *sua sponte* dismissed Kinney's FTCA complaint even though Judge Tigar should have recused himself given the nature of the claim and/or his own personal bias. 28 U.S.C. Sec. 455. [App. B, 3; Dk #5]

On 5/24/21, Kinney filed an appeal with the USDC that designated the Ninth Circuit (USDC Dk #8).

On 5/27/21, Kinney filed an amended appeal [USDC Dk #9] which designated the ***correct*** appellate court "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 from 4/29/21 since the defendant was the United States of America. 28 U.S.C. Sec. 2107(b).

On 5/26/21, the USDC forwarded Kinney's appeal to the Ninth Circuit [USDC Dk #6]; and on 6/1/21

forwarded the amended appeal to the Ninth Circuit [USDC Dk #10] even though Kinney had now designated the US Court of Appeals for the Federal Circuit as the ***correct*** appellate court since that Washington DC court had exclusive jurisdiction over this appeal. 28 U.S.C. Sec. 1295.

On 6/2/21, Kinney objected to the USDC sending his amended appeal to the ***wrong*** appellate court [USDC Dk #11], but that was ignored.

On 6/9/21, the Ninth Circuit received Kinney's amended appeal [Ninth Circuit Dk #2], but the designation of the proper court was ignored.

On 7/15/21, the Ninth Circuit made a "final" decision [Dk #3], but it was the "***wrong***" court because it was **not** the designated appellate court in the amended appeal. [Appendix A, page 1][1].

All of Kinney's objections were to no avail.

OPINIONS BELOW

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

1. The 7/15/21 "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 #3) [Appendix A, pg. 1]; and

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

2. The 4/29/21 *sua sponte* dismissal order as to Kinney's FTCA complaint by USDC Judge Jon S. Tigar only 2 days after Kinney's FTCA complaint was filed (USDC Dk #5) [Appendix B, pg. 3].

For the Court's convenience, Kinney included his 5/27/21 amended notice of appeal to the US Court of Appeal for the Federal Circuit [i.e. the ***correct*** appellate court] (USDC Dk #9, only the first page) [Appendix C, pg. 6].

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. That was 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 clearly said "follow the law" to all of the lower federal 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, 21-178, and maybe 21-668, all of which involved binding precedent and facts in Kinney's favor, but all of which were denied by this Court).

Here, the Judges had no judicial immunity as to these ministerial or administrative decisions (e.g. when they acted as prosecutors or ignored the appeal). 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 also an intentional "ministerial" (non-judicial) 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 Statest, 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/or 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-assignment 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 "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 that was designated by Kinney [App. C, 6]. The USDC had *no jurisdiction* to send Kinney's amended FTCA appeal to the Ninth Circuit.

The Ninth Circuit summarily dismissed Kinney's amended FTCA appeal. [App. A, 1]. 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 appellate 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 Judicial Immunity Exists, When Kinney's Amended FTCA Appeal Was Sent to the "Wrong" Appellate Court (the Ninth Circuit)

to Contest a Global Vexatious Litigant Order Created by the Ninth Circuit, And The Ninth Circuit Then 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" 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 US 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, the Hobbs Act, and other federal laws. [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).

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

The decisions eliminated Kinney's Constitutional rights, restricted his fair access to the courts, **and** retaliated 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 strict scrutiny standard applies to procedural barriers made by rule or statute, or as applied in the 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 here at any level.

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 (like Kinney) 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 are generally 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 [e.g. 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).

In addition to 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 of these are subject to review by federal courts who have the obligation to determine the issues and 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.

CONCLUSION

This Court should grant Kinney's petition or, in the alternative, vacate the decision [App. A, 1] so his appeal is sent to the *correct* appellate court.

Dated: Dec. 8, 2021

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