

## INDEX TO APPENDIX

Sequential No.  
In Document

Page numbers at top of page:

Appendix A: 7/15/21 “final” decision by the Ninth Circuit (the wrong court) in which it dismissed Kinney’s amended appeal *sua sponte* [Dk #3] . . 1

Appendix B: 4/29/21 *sua sponte* dismissal order as to Kinney’s FTCA complaint by US District Court Judge Jon S. Tigar [Dk #5] . . . . .3

Appendix C: 5/27/21 amended notice of appeal by Kinney to the US Court of Appeal for the Federal Circuit (the correct court) [Dk #9, first pg.] . . 6

**APPENDIX A**

Case: 21-15941      07/15/2021      DktEntry: 3

**FILED**  
**JUL 15 2021**  
**MOLLY C. DWYER, CLERK**  
**U.S. COURT OF APPEALS**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CHARLES G. KINNEY,**  
Plaintiff-Appellant,

No. 21-15941

v.                      D.C. No. 3:21-mc-80104-JST  
Northern District of California  
San Francisco

**UNITED STATES OF AMERICA, et al.,**  
Defendants-Appellees.

**ORDER**

Before: RAWLINSON, CALLAHAN, and  
VANDYKE, Circuit Judges.

This court has reviewed the notice of appeal filed May 24, 2021 and amended notice of appeal filed May 27, 2021 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 17-80256. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. See *In re Thomas*, 508 F.3d 1225 (9th

Cir. 2007). Appeal No. 21-15941 is therefore dismissed.

This order, served on the district court for the Northern District of California, shall constitute the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained.

**DISMISSED.**

**APPENDIX B**

Case 3:21-mc-80104-JST Doc. 5 Filed 04/29/21

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLES KINNEY,  
Plaintiff,

Case No. 21-mc-80104-JST

v.

UNITED STATES OF AMERICA, et al.,  
Defendants.

**ORDER REGARDING PRE-FILING  
REVIEW OF COMPLAINT AND  
DISMISSING COMPLAINT**

Re: ECF Nos. 1, 3

Plaintiff Charles Kinney filed this action on April 27, 2021 against Defendants the United States of America and Judges J. Clifford Wallace, Barry silverman, and Jay Bybee. Complaint (“Compl.”), ECF No. 1. Plaintiff was declared a vexatious litigant by Judge Chen on July 17, 2018, and is subject to “pre-filing review . . . by the general duty judge who will determine whether Mr. Kinney has stated a potentially cognizable claim in a short, intelligible, and plain statement.” See *Kinney v. Cuellar et al.*, Case No. 18-cv-01041-EMC, ECF No. 56.

The Court has conducted such a review and concludes that Plaintiff has failed to state a claim.

In his proposed complaint, Plaintiff seeks to challenge the October 28, 2020 denial by the Administrative Office of the United States Courts of Plaintiff's administrative tort and *Bivens* claim brought pursuant to the Federal Tort Claim Act against Defendants. Compl. ¶ 1. Plaintiff's claims are rooted in his contention that "[the] Judges' vexatious litigant ruling against Kinney on [January 19, 2018] (in Ninth Circuit appeal #17-80256, [Dk #4] was a negligent and/or intentional act that violated Kinney's constitutional rights since they were acting as prosecutors (i.e. 'investigative or law enforcement officers . . .'), rather than as neutral arbitrators of legitimate disputes, as to Kinney's 'government corruption whistle-blower' activities. This ruling was a false arrest, abuse of process and/or malicious prosecution by a prosecutors (not by 'judges')." Id. ¶ 2.

Judges are absolutely immune from civil liability for damages for their judicial acts. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam). Judicial immunity is overcome only if the judge acts outside her judicial capacity, or acts in the "complete absence of all jurisdiction." Id. at 11-12. "[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Id. at 12 (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). Here, Kinney has not plausibly alleged that Judge Chen was acting outside his judicial capacity. See *Anthes v. Nagle*,

No. CV 08-7416-VBF, 2008 WL 11336966, at \*4 (C.D. Cal. Dec. 11, 2008). Accordingly, he fails to show that the Administrative Office's determination that the action is precluded under the doctrine of judicial immunity was in error and fails to state a cognizable claim. Leave to file the proposed complaint is therefore DENIED. No further filings shall be entertained in this case.

**IT IS SO ORDERED.**

Dated: April 29, 2021

\_\_\_\_/s/\_\_\_\_ JON S. TIGAR\_\_\_\_  
United States District Judge

## APPENDIX C

Case: 21-80104 05/27/2021 DktEntry: 9  
(first page only of Kinney's Amended Appeal)

Case 3:21-mc-80104-JST Document 9 Filed 05/27/21 Page 1 of 27

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**FILED**

MAY 27 2021

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Plaintiff (FTCA claim)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND/SAN FRANCISCO

Charles Kinney,	)	
Plaintiff,	)	USDC Case No. 21-mc-80104-JST
	)	
vs.	)	
	)	<b>NOTICE OF APPEAL</b>
United States of America,	)	(PARTIALLY AMENDED)
Wallace, Silverman, Bybee	)	
and Does 1 to 10, acting in their	)	
individual and/or official capacity[ies],	)	
Defendants.	)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Plaintiff Charles Kinney ("Kinney") appeals and gives notice of appeal to the US Court of Appeals for the Federal Circuit (in Washington, DC) of the US District Court's *sua sponte* order by Judge Jon S. Tigar that dismissed Kinney's complaint 2 days after it was filed [Dk # ? on 4/29/21, attached] in favor of defendant United States of America and defendants Ninth Circuit Judges Wallace, Silverman, and Bybee ("Judges") before service of that 4/27/21 complaint [attached] was required. The \$505 fee is attached.

This appeal is for a complaint filed under the Federal Tort Claims Act ("FTCA") for intentional torts resulting in the taking of property by a federal officer(s) who is an "investigative or law enforcement officer" as defined in the FTCA [i.e. federal officers